



# भारत का राजपत्र The Gazette of India

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सं. 46] नई दिल्ली, नवम्बर 9—नवम्बर 15, 2008, शनिवार/कार्तिक 18—कार्तिक 24, 1930  
No. 46] NEW DELHI, NOVEMBER 9—NOVEMBER 15, 2008, SATURDAY/KARTIKA 18—KARTIKA 24, 1930

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृष्ठक संकलन के रूप में रखा जा सके  
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)  
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएँ  
Statutory Orders and Notifications Issued by the Ministries of the Government of India  
(Other than the Ministry of Defence)

कार्यिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्यिक और प्रशिक्षण विभाग)

नई दिल्ली, 3 नवम्बर, 2008

as the Information Commissioner with effect from the  
8th September, 2008.

[F. No. 6/4/2008-IR]

Dr. S.K. SARKAR, Jr Secy.

क्र.आ. 3036.—सूचना का अधिकार अधिनियम, 2005  
(2005 का 22) की धारा 12 की उप-धारा (3) के अनुसरण में  
राष्ट्रपति, श्री एम. एल. शर्मा को दिनांक 8 सितम्बर, 2008 से सूचना  
आयुक्त के पद पर नियुक्त करते हैं।

[फा. सं. 6/4/2008-आई आर]

डॉ. एस. के. सरकार, संयुक्त सचिव

MINISTRY OF PERSONNEL, PUBLIC  
GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 3rd November, 2008

S.O. 3036.—In pursuance of sub-section (3) of  
Section 12 of the Right to Information Act, 2005 (22 of  
2005), the President is pleased to appoint Shri M.L. Sharma

4195 GI/08

वित्त मंत्रालय

(राजस्व विभाग)

(केन्द्रीय प्रत्यक्ष कर बोर्ड)

नई दिल्ली, 3 नवम्बर, 2008

क्र.आ. 3037.—सर्वसाधारण की जानकारी के लिए एतद्द्वारा  
यह अधिसूचित किया जाता है कि केन्द्र सरकार द्वारा आयकर  
नियमावली, 1962 (उक्त नियमावली) के नियम 5A और 5B के  
साथ पठित आयकर अधिनियम, 1961 (उक्त अधिनियम) की धारा  
35 की उप-धारा (1) के खंड (ii) के प्रयोजनार्थ दिनांक 1-4-2008  
से संगठन मैसर्स सेंट स्टीफेन्स हॉस्पिटल सोसाइटी, (एडमिनिस्ट्रेशन  
ऑफ़ दि सिनोडिकल बोर्ड ऑफ़ हेल्थ सर्विसेज - से एन आई) तीस  
हजारी, दिल्ली को निम्नलिखित शर्तों के अधीन आंशिक रूप से  
अनुसंधान कार्यकलापों में लगे 'अन्य संस्था' की श्रेणी में अनुमोदित  
किया गया है, अर्थात् :—

(6089)

- (i) अनुमोदित संगठन को प्रदत्त राशि का उपयोग वैज्ञानिक अनुसंधान के लिए किया जाएगा;
- (ii) अनुमोदित संगठन अपने संकाय सदस्यों अथवा अपने नामांकित छात्रों के माध्यम से वैज्ञानिक अनुसंधान करेगा;
- (iii) अनुमोदित संगठन वैज्ञानिक अनुसंधान के लिए इसके द्वारा प्राप्त राशि के संबंध में अलग खाता बहो रखेगा जिसमें अनुसंधान करने के लिए प्रयुक्त राशि दर्शाई गई हो, उक्त अधिनियम की धारा 288 की उप-धारा (2) के स्पष्टीकरण में क्यापरिभाषित किसी लेखाकार से अपनी खाता-बही की लेखा परीक्षा कराएगा और उक्त अधिनियम की धारा 139 की उप-धारा (1) के अंतर्गत आय विवरणी प्रस्तुत करने की नियत तिथि तक ऐसे लेखाकार द्वारा विधिवत् सत्यापित एवं हस्ताक्षरित लेखा परीक्षा रिपोर्ट मामले में क्षेत्राधिकार रखने वाले आयकर आयुक्त अथवा आयकर निदेशक को प्रस्तुत करेगा;
- (iv) अनुमोदित संगठन वैज्ञानिक अनुसंधान के लिए प्राप्त दान तथा प्रयुक्त राशि का अलग विवरण रखेगा और उपर्युक्त लेखा परीक्षा रिपोर्ट के साथ लेखा परीक्षक द्वारा विधिवत् सत्यापित विवरण की प्रति प्रस्तुत करेगा।

2. केन्द्र सरकार यह अनुमोदन वापस ले लेंगी यदि अनुमोदित संगठन :

- (क) पैराग्राफ 1 उप-पैराग्राफ (iii) में उल्लिखित लेखा बही नहीं रखेगा; अथवा
- (ख) पैराग्राफ 1 उप-पैराग्राफ (iii) में उल्लिखित अपनी लेखा परीक्षा रिपोर्ट प्रस्तुत नहीं करेगा; अथवा
- (ग) पैराग्राफ 1 उप-पैराग्राफ (iv) में उल्लिखित वैज्ञानिक अनुसंधान के लिए प्राप्त एवं प्रयुक्त दान का अपना विवरण प्रस्तुत नहीं करेगा; अथवा
- (घ) अपना अनुसंधान कार्य करना बंद कर देगा अथवा इसके अनुसंधान कार्य को जायज नहीं पाया जाएगा; अथवा
- (ङ) उक्त नियमावली के नियम 5ग और 5ड के साथ पठित उक्त अधिनियम की धारा 35 की उप-धारा (1) के खंड (ii) के प्रावधानों के अन्तर्गत नहीं होगा तथा उनका नाम नहीं होगा;

[अधिसूचना सं. 103/2008/ए.नं. 203/75/2008-1-टा-II] 11

(दृ. संकेत, निर्देशक (जा.नं. 11)

MINISTER OF FINANCE

(Department of Revenue)

(Central Board of Direct Taxes)

New Delhi, the 1st November, 2008

S.O. 3037.- It is hereby notified for the information that the organization 'Tis Hazari' is a Society. (Adm. Notification No. 103/2008/F.No. 203/75/2008-1-TA-II)

Services—CNI) Tis Hazari, Delhi has been approved by the Central Government for the purpose of clause (ii) of sub-section (1) of Section 35 of the Income-tax Act, 1961 (said Act), read with Rules 5C and 5E of the Income-tax Rules, 1962 (said Rules), with effect from 1-4-2008 in the category of 'other Institution' partly engaged in research activities subject to the following conditions, namely:-

- (i) The sums paid to the approved organization shall be utilized for scientific research;
- (ii) The approved organization shall carry out scientific research through its faculty members or its enrolled students;
- (iii) The approved organization shall maintain separate books of accounts in respect of the sums received by it for scientific research, reflect therein the amounts used for carrying out research, get such books audited by an accountant as defined in the explanation to sub-section (2) of Section 288 of the said Act and furnish the report of such audit duly signed and verified by such accountant to the Commissioner of Income-tax or the Director of Income-tax having jurisdiction over the case, by the due date of furnishing the return of income under sub-section (10) of Section 139 of the said Act;
- (iv) The approved organization shall maintain a separate statement of donations received and amounts applied for scientific research and a copy of such statement duly certified by the auditor shall accompany the report of audit referred to above.

2. The Central Government shall withdraw the approval if the approved organization:-

- (a) fails to maintain separate books of accounts referred to in sub-paragraph (iii) of paragraph 1; or
- (b) fails to furnish its audit report referred to in sub-paragraph (iii) of paragraph 1; or
- (c) fails to furnish its statement of the donations received and sum committed for scientific research referred to in sub-paragraph (iv) of paragraph 1; or
- (d) ceases to carry on its research activities or its research activities are not found to be genuine; or
- (e) ceases to conform to and comply with the provisions of clause (ii) of sub-section (1) of Section 35 of the said Act read with rules 5C and 5E of the said Rules.

[Notification No. 103/2008/F.No. 203/75/2008-1-TA-II]

RUNU JAHEIRI, Director (ITA-II)

( वित्तीय सेवाएं विभाग )

नई दिल्ली, 6 नवम्बर, 2008

का. आ. 3038.— राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) योजना, 1970/1980 के खंड 3 के उपखंड (1) और खंड 8 के उपखंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उपधारा 3 के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने के पश्चात्, एतद्वारा, श्री राजीव कुमार बक्शी (जन्म तिथि 21-10-1952), महाप्रबंधक, बैंक आफ इंडिया, को उनके पदभार ग्रहण करने की तारीख से और 31-10-2012 तक, अर्थात् उनकी अधिवर्षिता की तारीख तक, अथवा अगले आदेशों तक, जो भी पहले हो, बैंक आफ बड़ौदा में पूर्णकालिक निदेशक (कार्यपालक निदेशक के रूप में पदनामित) के पद पर नियुक्त करती है।

[फा. सं. 9/16/2008-बीओ-1]

जी. बी. सिंह, उप सचिव

(Department of Financial Services)

New Delhi, the 6th November, 2008

S.O. 3038.— In exercise of the powers conferred by clause (a) of sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980, read with sub-clause (1) of clause 3, sub-clause (1) of clause 8 of the Nationalized Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, after consultation with the Reserve Bank of India hereby appoints Shri Rajiv Kumar Bakshi, (DoB: 21-10-1952) General Manager, Bank of India as a whole time director (designated as Executive Director) Bank of Baroda with effect from the date of his taking over charge and up to 31-10-2012 i.e. the date of his superannuation or until further orders, whichever is earlier.

[F.No. 9/16/2008-BO-1]

G. B. SINGH, Dy. Secy.

नई दिल्ली, 6 नवम्बर, 2008

का. आ. 3039.— राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) योजना, 1970/1980 के खंड 3 के उपखंड (1) और खंड 8 के उपखंड (1) के साथ पठित, बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उपधारा 3 के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने के पश्चात्, एतद्वारा, श्री सतीश चन्द्र गुप्ता (जन्म तिथि 26-2-1950), वर्तमान में कार्यपालक निदेशक, बैंक आफ बड़ौदा को उनके पदभार ग्रहण करने की तारीख से और 28 फरवरी, 2010 तक की अवधि के लिए, अर्थात् उनकी अधिवर्षिता की तारीख तक, अथवा अगले आदेशों तक, जो भी पहले हो,

युनाइटेड बैंक आफ इंडिया के अध्यक्ष एवं प्रबंध निदेशक के पद पर नियुक्त करती है।

[फा. सं. 9/16/2008-बीओ-1]

जी. बी. सिंह, उप सचिव

New Delhi, the 6th November, 2008

S.O. 3039.— In exercise of the powers conferred by clause (a) of sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980, read with sub-clause (1) of clause 3, and sub-clause (1) of clause 8 of the Nationalized Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, in consultation with the Reserve Bank of India hereby appoints Shri Satish Chander Gupta (DoB: 26-02-1950) presently Executive Director, Bank of Baroda as Chairman & Managing Director, United Bank of India from the date of his taking charge of the post and for a period up to 28th February, 2010 i.e. date of his superannuation or until further orders, whichever is earlier.

[F.No. 9/16/2008-BO-1]

G. B. SINGH, Dy. Secy.

नई दिल्ली, 6 नवम्बर, 2008

का. आ. 3040.— राष्ट्रीय बैंक (प्रबंध एवं प्रकीर्ण उपबंध) योजना, 1970/1980 के खंड 3 के उपखंड (1) और खंड 8 के उपखंड (1) के साथ पठित, बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उपधारा 3 के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने के पश्चात्, एतद्वारा, श्री जग मोहन गर्ग (जन्म तिथि 26-7-1950), वर्तमान में कार्यपालक निदेशक, पंजाब नेशनल बैंक को उनके पदभार ग्रहण करने की तारीख से और 31 जुलाई, 2010 तक की अवधि के लिए, अर्थात् उनकी अधिवर्षिता की तारीख तक, अथवा अगले आदेशों तक, जो भी पहले हो, कापरेशन बैंक के अध्यक्ष एवं प्रबंध निदेशक के पद पर नियुक्त करती है।

[फा. सं. 9/16/2008-बीओ-1]

जी. बी. सिंह, उप सचिव

New Delhi, the 6th November, 2008

S.O. 3040.— In exercise of the powers conferred by clause (a) of sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980, read with sub-clause (1) of clause 3, and sub-clause (1) of clause 8 of the Nationalized Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government in consultation with the Reserve Bank of India, hereby appoints Shri Jag Mohan Garg (DoB: 26-7-1950) presently Executive Director, Punjab

National Bank as Chairman & Managing Director, Corporation Bank from the date of his taking charge of the post and for a period up to 31st July, 2010 i.e. date of his superannuation or until further orders, whichever is earlier.

[F.No.9/16/2008-BO-I]

G.B. SINGH, Dy. Secy.

नई दिल्ली, 6 नवम्बर, 2008

क्र. आ. 3041.— राष्ट्रीयकृत बैंक (प्रबंध एवं प्रकीर्ण उपबंध) योजना, 1970/1980 के खंड 3 के उपखंड (1) और खंड 8 के उपखंड (1) के साथ पठित, बैंककारी कंपनी (उपक्रमों का अर्जन एवं अंतरण) अधिनियम, 1970/1980 की धारा 9 की उपधारा 3 के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने के पश्चात्, एतद्वारा, श्री एम. नरेन्द्र (जन्म तिथि 12-7-1954), महाप्रबंधक, कार्पोरेशन बैंक, को उसके पदभार ग्रहण करने की तारीख से पांच वर्ष की अवधि के लिए, अथवा अगले आदेशों तक, जो भी पहले हो, बैंक आफ इंडिया में पूर्णकालिक निदेशक (कार्यालक निदेशक के रूप में पदनामित) के पद पर नियुक्त करती है।

[फा. सं. 9/16/2008-बीओ-1]

जी. बी. सिंह, उप सचिव

New Delhi, the 6th November, 2008

S.O. 3041.— In exercise of the powers conferred by clause (a) of sub-section (3) of Section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980, read with sub-clause (1) of clause 3, sub-clause (1) of clause 8 of the Nationalized Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government after consultation with the Reserve Bank of India, hereby appoints Shri M. Narendra, (DoB: 12-7-1954) General Manager, Corporation Bank as a whole time Director, (designated as Executive Director) Bank of India for a period of five years from the date of his taking over charge or until further orders, whichever is earlier.

[F.No.9/16/2008-BO-I]

G. B. SINGH, Dy. Secy.

(सतर्कता अनुभाग)

नई दिल्ली, 7 नवम्बर, 2008

क्र. आ. 3042.— विशेष न्यायालय (प्रतिभूति संव्यवहार संबंधी अपराध विचारण) अधिनियम, 1992 की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री सतीश लुम्बा, भा.ले.प. एवं लेखा सेवा, 1982 को विशेष न्यायालय (प्रतिभूति संव्यवहार संबंधी अपराध विचारण) अधिनियम, 1992 के अंतर्गत उनके पदभार ग्रहण करने की तारीख से तीन वर्षों के लिए या अभिरक्षक के कार्यालय के समापन तक या

अगला आदेश होने तक, जो भी पहले हो, 39,200-67,000 रुपए (वेतन बैंड-4) + 10,000 रुपए ग्रेड वेतन के संशोधित वेतनमान में प्रतिनियुक्ति के आधार पर अभिरक्षक के रूप में नियुक्त करती है।

[फा. सं. 22/4/2003-सर्तकता(खंड- II)]

रखनीत कौर, संयुक्त सचिव

(Vigilance Section)

New Delhi, the 7th November, 2008

S.O. 3042.— In exercise of the powers conferred by sub-section (i) of Section 3 of the Special Court (Trial of Offences relating to Transactions in Securities) Act, 1992, the Central Government hereby appoints Shri Satish Loomba, IA & AS, 1982 as Custodian under the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 on deputation basis in the revised scale of pay of Rs. 39,200-67,000 (PB-4) plus Grade Pay of Rs. 10,000/- for a period of three years, w.e.f. the date of assumption of charge of the post or till the Office of Custodian is wound up or until further orders, whichever event is the earliest.

[F.No.22/4/2003-VIG (Vol.II)]

RAVNEET KAUR, Jt. Secy.

मानव संसाधन विकास मंत्रालय

( उच्चतर शिक्षा विभाग )

नई दिल्ली, 29 अक्टूबर, 2008

क्र.आ. 3043.— ऑरेंजिले प्रतिष्ठान अधिनियम, 1988 (1988 का 54) की धारा 12 के साथ पठित धारा 11 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्वारा निम्नलिखित व्यक्तियों को 4 वर्ष की अवधि के लिए ऑरेंजिले प्रतिष्ठान के शासी बोर्ड का सदस्य नियुक्त करती है:—

1. डॉ. कर्ण सिंह (संसद सदस्य, राज्य सभा), ...अध्यक्ष  
3, न्याय मार्ग, चाणक्यपुरी, नई दिल्ली।

सदस्य

2. श्री अजोय बागचो,  
सी-103, पूर्वासा आनन्द लोक सोसाइटी,  
मयूर विहार,  
नई दिल्ली।
3. सुश्री अमीता मेहरा,  
द प्रजेंस,  
सैक्टर-23, गुडगांव-122017,  
हरियाणा।
4. डॉ. मालिनी पार्थसारथी,  
कार्यकारी सम्पादक,  
द हिन्दु, 859-60 अन्ना सलाई, चेन्नई।

5. डॉ. एस्टर पटेल,  
सदस्य,  
रेजीडेंट ऑफ ऑरोविले।
6. डॉ. मल्लिका साराभाई,  
दर्पण एकेडमी ऑफ परफार्मिंग आर्ट्स,  
उस्मानपुरा,  
अहमदाबाद।
7. श्री बालकृष्ण विठ्ठलदास दोषी,  
वास्तुकार,  
संगठ, थालटेज रोड,  
साल अस्पताल के निकट,  
अहमदाबाद-380 054.
8. श्री एस. के. रे,  
संयुक्त सचिव तथा वित्त सलाहकार,  
उच्चतर शिक्षा विभाग,  
भारत सरकार  
(पदेन सदस्य)
9. श्री अमित खरे,  
संयुक्त सचिव (आई सी सी),  
उच्चतर शिक्षा विभाग,  
भारत सरकार  
(पदेन सदस्य)

**Members**

2. Shri Ajoy Bagchi,  
C-103, Purvasha Anandlok Society,  
Mayur Vihar,  
New Delhi.
3. Ms. Ameeta Mehra,  
The Presence,  
Sector 23, Gurgaon-122 017  
Haryana.
4. Dr. Malini Parthasarathy,  
Executive Editor,  
The Hindu,  
859-60 Anna Salai,  
Chennai.
5. Dr. Aster Patel,  
Member,  
Resident of Auroville,  
Near Sal Hospital,  
Ahmedabad - 380 054.
6. Dr. Mallika Sarabhai,  
Darpana Academy of Performing Arts,  
Usmanpura,  
Ahmedabad.
7. Shri Balkrishna Vithaldas Doshi,  
Architect,  
Sangath, Thaltej Road,  
Near Sal Hospital,  
Ahmedabad - 380 054.
8. Shri S.K. Ray, JS & FA,  
Department of Higher Education,  
Government of India,  
(Ex-Officio Member)
9. Shri Amit Khare, Joint Secretary (ICC),  
Department of Higher Education,  
Government of India,  
(Ex-Officio Member).

The term of office of Dr. Karan Singh as Chairman of the Governing Board of Auroville Foundation will be four years with effect from the 6th September, 2008. The term of office of the remaining members of the Governing Board of the Auroville Foundation mentioned at S.No. 2 to 7, will commence with effect from the date of this notification.

Further, Dr. Karan Singh will function as Chairman of the Board in an honorary capacity.

[No. F. 27-9/2008-UU]

AMIT KHARE, Jt. Secy.

ऑरोविले प्रतिष्ठान के शासी बोर्ड के अध्यक्ष के रूप में डॉ. कर्ण सिंह का कार्यकाल 6 सितम्बर, 2008 से 4 वर्ष का होगा। क्रम संख्या 2 से 7 में उल्लिखित ऑरोविले प्रतिष्ठान के शासी बोर्ड के शेष सदस्यों का कार्यकाल इस अधिसूचना के जारी होने की तिथि से प्रारंभ होगा।

इसके अतिरिक्त डा. कर्ण सिंह अवैतनिक आधार पर बोर्ड के अध्यक्ष के रूप में कार्य करेंगे।

[सं. एफ. 27-9/2008-यूयू]

अमित खरे, संयुक्त सचिव

**MINISTRY OF HUMAN RESOURCE  
DEVELOPMENT**

(Department of Higher Education)

New Delhi, the 29th October, 2008

**S.O. 3043.**—In exercise of the powers conferred by Section 11 read with Section 12, of the Auroville Foundation Act, 1988 (54 of 1988), the Central Government hereby nominates the following persons as members of the Governing Board of the Auroville Foundation for a period of four years:—

1. Dr. Karan Singh (MP, Rajya Sabha) Chairman  
3, Nyaya Marg, Chanakyapuri, New Delhi.

## स्वास्थ्य और परिवार कल्याण मंत्रालय

( स्वास्थ्य और परिवार कल्याण विभाग )

नई दिल्ली, 4 नवम्बर, 2008

का.आ. 3044.—केन्द्र सरकार ने भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) की धारा 3 की उपधारा (1) के खंड (ग) के उपबंध के अनुसरण में केरल के पंजीकृत आयुर्विज्ञान स्नातक निर्वाचन क्षेत्र में चुनाव कराया है जहां से डा. वेलायुधन पिल्लै, कुलपति, 'डफोडिल्ज', चेल्ला गार्डन्ज, एन/10, शास्त्री नगर, करामाना, तिरुवनंतपुरम-695 002 को इस अधिसूचना के जारी होने की तारीख से भारतीय आयुर्विज्ञान परिषद् के एक सदस्य के रूप में निर्वाचित किया गया है।

अतः, अब उक्त अधिनियम की धारा 3 की उपधारा (1) के उपबंध के अनुसरण में, केन्द्र सरकार एतद्वारा भारत सरकार के तत्कालीन स्वास्थ्य मंत्रालय की दिनांक 9 जनवरी, 1960 की अधिसूचना संख्या का.आ. 138 में निम्नलिखित और संशोधन करती है अर्थात्:-

उक्त अधिसूचना में "धारा 3 की उपधारा (1) के खण्ड (ग) के अधीन निर्वाचित" शीर्षक के अंतर्गत क्रम संख्या 1 के बाद निम्नलिखित प्रविष्टियां जोड़ी जाएंगी अर्थात्:-

"2. डा. वेलायुधन पिल्लै,  
कुलपति, 'डफोडिल्ज',  
चेल्ला गार्डन्ज,  
एन/10, शास्त्री नगर,  
करामाना,  
तिरुवनंतपुरम -695002"

[ सं. वी.11013/16/2006-एम ई (नीति-1) ]

कं. वी. एस. राव, उप सचिव

## MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health and Family Welfare)

New Delhi, the 4th November, 2008

S.O. 3044.—Whereas the Central Government in pursuance of clause (c) of sub-section (1) of Section 3 of the Indian Medical Council Act, 1956 (102 of 1956) has conducted the election from the Registered Medical Graduate Constituency of Kerala wherefrom Dr. Velayudhan Pillai, V.C., 'Daffodils', Chelsa Gardens, N/10, Sasthri Nagar, Karamana, Thiruvananthapuram -695 002 has been elected to be a member of the Medical Council of India with effect from the date of issue of this notification.

Now, therefore, in pursuance of the provision of sub-section (1) of Section 3 of the said Act, the Central Government hereby makes the following further amendment in the Notification of the Government of India in the then Ministry of Health number S.O. 138, dated the 9th January, 1960, namely:—

In the said notification, under the heading 'Elected under clause (c) of sub-section (1) of Section 3, after serial No. 1, the following entries shall be added namely:—

"2. Dr. Velayudhan Pillai,  
V.C., 'Daffodils',  
Chelsa Gardens,  
N/10, Sasthri Nagar,  
Karamana,  
Thiruvananthapuram - 695 002"

[No.V. 11013/16/2006-ME (P-1)]

**कृषि मंत्रालय**

(कृषि एवं सहकारिता विभाग)

नई दिल्ली 27 अक्तूबर, 2008

का.आ. 3045.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में कृषि एवं सहकारिता विभाग, कृषि मंत्रालय के नियंत्रणाधीन राष्ट्रीय बागवानी बोर्ड, गुडगाँव के निम्नलिखित कार्यालयों को जिसके 80 प्रतिशत कर्मचारी वृन्द ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है:—

1. राष्ट्रीय बागवानी बोर्ड,  
मॉड्यूल नं. 37, दूसरा तल,  
सिडको रेडिमेड गारमेंट कॉम्प्लेक्स,  
इन्डस्ट्रियल एस्टेट, गुडन्डी,  
चेन्नई - 600 032 (तमिलनाडु)
2. राष्ट्रीय बागवानी बोर्ड,  
तीसरी मंजिल, एम.ई.सी.एल. भवन, सेमिनरी  
हिल, नागपुर- 440 006 (महाराष्ट्र)

[सं 3-6/2004-हिंदी नीति]

उमा गोयल, संयुक्त सचिव

**MINISTRY OF AGRICULTURE**

(Department of Agriculture and Cooperation)

New Delhi, the 27th October, 2008

S.O. 3045.—In pursuance of Sub-Rule (4) of Rule 10 of the Official Language (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies the following offices of the National Horticulture Board, Gurgaon, under the control of the Department of Agriculture and Cooperation, Ministry of Agriculture, whereof 80% staff have acquired the working knowledge of Hindi :—

1. National Horticulture Board,  
Module No. 37, 2nd Floor,  
SIDCO Readymade Garment Complex,  
Industrial Estate, Guindy,  
Chennai-600 032 (Tamil Nadu)
2. National Horticulture Board,  
3rd Floor, M.E.C.L. Building,  
Seminary Hill,  
Nagpur - 440 006 (Maharashtra)

[No.3-6/2004- Hindi Neeti]

UMA GOEL, Jr. Secy.

नई दिल्ली 27 अक्तूबर, 2008

का.आ. 3046.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में कृषि एवं सहकारिता विभाग, कृषि मंत्रालय के संबद्ध कार्यालय वनस्पति संरक्षण, संग्रह एवं संग्रह निदेशालय, फरीदाबाद के निम्नलिखित प्रशासनिक नियंत्रणाधीन कार्यालय को जिसके 80 प्रतिशत कर्मचारीवृन्द ने हिंदी का कार्यसाधक ज्ञान प्राप्त का लिया है, अधिसूचित करती है:—

केन्द्रीय एकीकृत पशुजीव प्रबंधन केन्द्र,  
आर. जी. बरूआ रोड, गुवाहाटी कॉमर्स कालेज के सामने,  
गुवाहाटी (असम) - 781 003

[सं 3-6/2004-हिंदी नीति]

उमा गोयल, संयुक्त सचिव

New Delhi, the 27th October, 2008

**S.O. 3046.**—In pursuance of Sub-Rule (4) of Rule 10 of the Official Language (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies the following office which is under the administrative control of the Directorate of Plant Protection, Quarantine & Storage, Faridabad, an attached office of the Department of Agriculture and Cooperation, Ministry of Agriculture, whereof 80% staff have acquired the working knowledge of Hindi:—

Central Integrated Pest Management Centre,  
R.G. Baruah Road,  
Opposite Guwahati Commerce College,  
Guwahati (Assam)-781 003

[No.3-6/2004-Hindi Neeti]

UMA GOEL, Jr. Secy.

## उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

( उपभोक्ता मामले विभाग )

भारतीय मानक ब्यूरो

नई दिल्ली, 20 अक्टूबर, 2008

**का.आ. 3047.** भारतीय मानक ब्यूरो नियम, 1987 के नियम, 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिस भारतीय मानक का विवरण नीचे अनुसूची में दिया गया है वं स्थापित हो गया है :

## अनुसूची

क्रम सं.	स्थापित भारतीय मानक(कों) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस 1885 (भाग 27) : 2008/ आई सी 60050 (51) : 1995 विद्युत तकनीकी शब्दावली भाग 27 पावर इलेक्ट्रॉनिक्स (तीसरा पुनरीक्षण)	-	अगस्त 2008

इस भारतीय मानक को प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बेहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में विक्री हेतु उपलब्ध हैं।

[संदर्भ : ईटी 01/टी -12]

प्रकाश बचानी, वैज्ञा.डं, निदेशक, (विद्युत तकनीकी विभाग)

## MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

## BUREAU OF INDIAN STANDARDS

New Delhi, the 20th October, 2008

**S.O. 3047.**—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies the Indian Standards to the Indian Standards, particulars of which is given in the Schedule hereto annexed has been issued:



## SCHEDULE

Sl. No.	No. & Year of the Indian Standard	No. & Year of the Indian Standards if any, Superseded by the New Indian Standard	Date of Establishment
(1)	(2)	(3)	(4)
1	IS 1885 (Part 27): 2008/IEC 60050 (551): 1998 Electrotechnical Vocabulary Part 27 Power Electronics (Third Revision)	-	August, 2008

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi- 110 002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: ET 01/T-12]

PRAKASH BACHANI, Sc-E (Director) Electro technical Department

नई दिल्ली, 4 नवम्बर, 2008

का.आ. 3048.—भारतीय मानक ब्यूरो नियम, 1987 के नियम, 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि नीचे अनुसूची में दिए गए मानक (कों) में संशोधन किया गया/ किये गए हैं :-

## अनुसूची

क्रम	संशोधित भारतीय मानक(कों)- की संख्या स.	संशोधन की संख्या और तिथि वर्ष और शीर्षक	संशोधन लागू होने की तिथि
(1)	(2)	(3)	(4)
1.	आई एस 15111 (भाग 2): 2002 सामान्य प्रकाश व्यवस्थाओं के लिए स्वतः बालास्टकृत लैम्प : भाग 2 कार्यकारिता अपेक्षाओं की संशोधन संख्या 6	6, सितम्बर 2008	1 दिसम्बर, 2008

इस भारतीय संशोधन की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयंबटूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा तिरुवनन्तापुरम में विक्री हेतु उपलब्ध हैं।

[संदर्भ : ईटी 23/टी -81]

प्रकाश बचानी, वैज्ञ. ई (निदेशक), विद्युत तकनीकी विभाग

New Delhi, the 4th November, 2008

S.O. 3048.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that amendment to the Indian Standards, particulars of which are given in the Schedule hereto annexed has been issued:

## SCHEDULE

Sl. No.	No. & Year of the Indian Standard	No. & Year of the Amendment	Date from which the Amendment shall have effect
(1)	(2)	(3)	(4)
1	IS 15111 (Part 2): 2002 Self Ballasted Lamps for General Lighting Services: Part 2 Performance Requirements	6, September 2008	1 December, 2008

Copies of this Amendment are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110 002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: ET 23/1-81]

PRAKASH BACHANI, Sc-E (Director), Electro technical Department

नई दिल्ली, 4 नवम्बर, 2008

का.आ. 3049.—भारतीय मानक ब्यूरो नियम, 1987 के नियम, 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिस भारतीय मानक का विवरण नीचे अनुसूची में दिया गया है वह स्थापित हो गया है :-

## अनुसूची

क्रम सं.	स्थापित भारतीय मानक(कों) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हों, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस/आईईसी 60079-17 :2007 विस्फोटी पर्यावरण : भाग 17 विद्युत संस्थापन निरीक्षण और रख-रखाव	-	30 सितम्बर, 2008

इस भारतीय मानक की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा तिरुवनन्तापुरम में विक्री हेतु उपलब्ध हैं।

[संदर्भ : ईटी 22/टी -53]

प्रकाश बखानी, वैजा. ई. / निदेशक विद्युत तकनीकी विभाग)

New Delhi, the 4th November, 2008

S.O. 3049.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued.

## SCHEDULE

Sl. No.	No. & Year of the Indian Standard	No. & Year of the Indian Standards, if now superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1	IS/IEC 60079-17: 2007 Explosive Atmosphere	-	30 September, 2008

(1)	(2)	(3)	(4)
Part 17 Repair, Overhaul and Reclamation			

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi- 110 002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: ET 22/T-53]

PRAKASH BACHANI, Sc-E (Director), Electro technical Department

नई दिल्ली, 5 नवम्बर, 2008

क्र.आ. 3050.— भारतीय मानक ब्यूरो नियम, 1987 के नियम, 7 के उप-नियम (1) के खंड (ख) के अनुसारण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं :-

## अनुसूची

क्रम सं.	स्थापित भारतीय मानक(कों) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस 15766 (भाग 1):2007 पॉलिश हीरों की ग्रेडिंग - भाग 1 वर्गीकरण	-	30 अक्टूबर 2007
2.	आई एस 15766 (भाग 2):2007 पॉलिश हीरों की ग्रेडिंग - भाग 2 परीक्षण पद्धतियाँ	-	30 अक्टूबर 2007

इस भारतीय मानक की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पुणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : एमटीडी 10/टी -72]

डा. (श्रीमति) स्नेह माट्ला, वैज्ञानिक एफ एवं प्रमुख (एमटीडी)

New Delhi, the 5th November, 2008

S.O. 3050.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each:

## SCHEDULE

Sl. No.	No. & Year of the Indian Standards Established	No. & Year of the Indian Standard, if any, Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1	IS 15766 (Part 1): 2007 Grading of Polished Diamonds- Part 1, Classification	-	30th October, 2008

(1)	(2)	(3)	(4)
2	IS 15766 (Part 2): 2007 Grading of Polished Diamonds- Part 2 Test Methods	-	30 October, 2008

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi- 110 002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: MTD 10/T-72]

DR. (MRS.) SNEH BHATLA, Scientist 'F' & Head (Met. Engg.)

नई दिल्ली, 5 नवम्बर, 2008

का.आ. 3051.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम (5) के उपविनियम (6) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि निम्न विवरण वाले लाइसेंसों को उनके आगे दर्शायी गई तारीख से रद्द कर दिया गया है :—

#### अनुसूची

क्रम संख्या	लाइसेंस संख्या सीएम/एल-	लाइसेंसधारी का नाम व पता	लाइसेंस के अंतर्गत वस्तु/प्रक्रम सम्बद्ध भारतीय मानक का शीर्षक	रद्द करने की तिथि
(1)	(2)	(3)	(4)	(5)
1.	0066232	मै. यूनीवर्सल केबल्स लिमिटेड पी बी सं. 09, बिरला कालोनी, सतना 485005 (म.प्र.)	आई एस 692:1994 33 कि वा रेटेड वोल्टता के लिए पेपर इन्सुलेटेड सीसा चढ़े केबल	19-6-2008

[सं. सी एम डी/13:13]

पी.कं.गम्भीर, उप महानिदेशक (मुहर)

New Delhi, the 5th November, 2008

S.O. 3051.—In pursuance of sub-regulation (6) of the regulation 5 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies that the licences particulars of which are given below have been cancelled with effect from the date indicated against each:

#### SCHEDULE

Sl. No.	Licences No. CM/L-	Name & Address of the Licensee	Article/Process with relevant Indian Standards covered by the licence cancelled	Date of Cancellation
1	2	3	4	5
1.	0066232	M/s Universal Cables Limited, PB No.09, Birla Colony Satna -485 005(M.P.)	IS 692:1994 Paper insulated lead-sheathed cables for rated voltage upto and including 33 Kv	19-6-2008

[No. CMD/13:13]

P.K. GAMBHIR, Dy. Director General (Marks)

नई दिल्ली, 6 नवम्बर, 2008

क्र. आ. 3052,—भारतीय मानक ब्यूरो प्रमाणन विनियम, 1988 के विनियम 4 के उपविनियम 5 के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे दिए गए हैं, वे स्वीकृत कर दिए गए हैं 26/06/2008 से 25/07/2008 :-

## अनुसूची

क्रम सं.	लाइसेंस संख्या	वैधता तिथि	लाइसेंसधारी का नाम व पता	उत्पाद	भा. मा. सं./भाग/ अनु/वर्ष
1	2	3	4	5	6
1.	7857908	20-07-2009	मैसर्स मौ हुर्गा एन्टरप्राइजेस लि. एल-1, कनकोलिम इंडस्ट्रियल इस्टेट, उत्तर गोवा, कनकोलिम, गोवा-403703	कंक्रीट प्रवलन के लिए उच्च सान्द्रन इस्पात सरिए और तार की विशिष्टि	भा. मा. 1786 : 1985
2.	7856502	06-07-2009	सुमतिचंद गौती ज्वेलर्स प्रा. लि. 80/82, धानजी स्ट्रीट, चौथा माला, मुंबई-400003	स्वर्ण और स्वर्ण मिश्र धातुओं के आपूर्ण/ शिल्पकारी-शुद्धता व मुहरांकन	भा. मा. 1417 : 1999
3.	7858102	20-07-2009	ए टु ब्लेड पॉलिमर्स प्लॉट नं.-11, सोमनाथ को-ऑ. इंडस्ट्रियल सो. लि., सोमनाथ रोड, घाबेल गाँव, दमन, दमन और दिव-396210	अधातु धृण नलिकाओं की फिटिंग्स	भा. मा. 3419 : 1998
4.	7854393	02-07-2009	रिसर्पोन्सिबल इंडस्ट्रियल लिमिटेड बेटेगाँव, महागाँव रोड, गौशाला के नजदिक, बोईसर (पूर्व), ठाणे-401501	अनबैकड नम्य पी वी सी फलोसिंग विशिष्टि	भा. मा. 3462 : 1986
5.	7857605	20-07-2009	श्री सोलार सिस्टम के-43, ताज हॉटेल के पिछे, फ्रेश-अप बेकरी के सामने, एम आय डी सी, अंबाड, नाशिक-422010	सौर सपाट पट्टिका संग्राहक (दूसरा पुनरीक्षण )	भा. मा. 12933 : 2003 (भाग 1)
6.	7856704	06-07-2009	डिझायर ज्वेलर्स प्रा. लि., 404, बंगला भावना बिल्डिंग, चौथा माला, चौदहवाँ रास्ता, खार (पश्चिम), मुंबई-400052	स्वर्ण और स्वर्ण मिश्र धातुओं के आपूर्ण/ शिल्पकारी शुद्धता व मुहरांकन	भा. मा. 1417 : 1999
7.	7856603	06-07-2009	संस्कृती ज्वेलर्स, चंद्रबन बंगलो, गिता नगर, फेज 7, फलाय ओवर के निचे, पार्सदर (पूर्व), ठाणे-401105	स्वर्ण और स्वर्ण मिश्र धातुओं के आपूर्ण/ शिल्पकारी शुद्धता व मुहरांकन	भा. मा. 1417 : 1999
8.	7854595	02-07-2011	अलमास ज्वेलर्स, 41 बी जे रोड, फिरदौष मॉडल बेसमेंट, ब्रिड्जस्टैंड, बांद्रा, मुंबई-400050	स्वर्ण और स्वर्ण मिश्र धातुओं के आपूर्ण/ शिल्पकारी शुद्धता व मुहरांकन	भा. मा. 1417 : 1999
9.	7858304	21-07-2009	गार्डियन कार्स्टिम्स प्रा. लि., गेट नं. 116/120, अधितावर गाँव, वाडा-शहपूर रोड, ता. वाडा, जिला ठाणे-421403	सामान्य संरचना इस्पात में पुनर्वर्तन के लिये कार्बन इलवॉ इस्पात, बिलेट, इंगट, बिलेट, ब्लूम और स्लैब की विशिष्टि	भा. मा. 2830 : 1992

1	2	3	4	5	6
10.	7854902	03-07-2009	किरको लिमिटेड प्लॉट नं. 19/बी और सी, एम आय डि सी, सिनर इंडस्ट्रियल एरिया, नाशिक, मालेगाँव-422113	घोलू प्रेशर कुकर-विशिष्ट	भा. मा. 2342 : 2006
11.	7858708	21-07-2009	हितेश ज्वेलर्स 7/9, डि डि प्लाज़ा, तीसरी आगियारी लेन, 103/105, पहला माला, जवैरी बजार, मुंबई-400003	स्वर्ण और स्वर्ण मिश्र धातुओं के आभूषण/ शिल्पकारी शुद्धता व मुहरांकन	भा. मा. 1417 : 1999
12.	7858506	20-07-2009	बोनिटो इम्पेक्स प्रा. लि., कार्यालय क्र. 10, दूसरा माला, घोरज हैस्टिंग्स, एस व्ही रोड, मिलन सबवे जंक्शन, सांताक्रुज-पश्चिम, मुंबई-400054	स्वर्ण और स्वर्ण मिश्र धातुओं के आभूषण/ शिल्पकारी शुद्धता व मुहरांकन	भा. मा. 1417 : 1999
13.	7858405	21-07-2009	गार्डियन कास्टिंग्स प्रा. लि., 109, महेन्द्रा चेंबर्स, डब्ल्यू. टी. पाटिल मार्ग, चेंबूर, मुंबई-400071	निम्न तन्वयता के संरचना इस्पात में पुनर्वर्तन हेतु कार्बन इस्पात के ढलवाँ बिलेट इनाट, बिलेट, ब्लूम व स्लेब (तीसरा पुनरीक्षण)	भा. मा. 2831 : 2001
14.	7858001	20-07-2009	गार्डवेल इंडस्ट्रिज प्रा. लि. राजन्स इंडस्ट्रियल कॉम्प्लेक्स, चिक्पाडा, गोखिलारे, वसई (पूर्व), ठाणे-401208	सुरक्षित जमा लाकर केबिनेट (दूसरा पुनरीक्षण)	भा. मा. 5244 : 1991

[सं. सी एम डी/13 : 11]

पी. क. गम्भीर, उप महानिदेशक (मुहर)

New Delhi, the 6th November, 2008

**S.O. 3052** .—In pursuance of sub-regulation (6) of regulation 5 of the Bureau of Indian Standards (Certifications Regulation, 1988, the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given below in the following schedule : (26-06-2008 to 25-07-2008)

**SCHEDULE**

Sl. No.	Licence No.	Validity Date	Name and Address (factory) of the Party	Product	IS No./Part/Sec. Year
1	2	3	4	5	6
1	7857908	20-07-2009	M/s. MAA Durga Enterprises Ltd. L-1, Cuncolim Industrial Estate, North Goa Cuncolim Goa-403703	Specification for high strength deformed steel bars and wires for concrete reinforcement	IS 1786 : 1985
2	7856502	06-07-2009	Sumatichand Gauti Jewellers Pvt. Ltd. 80/82 Dhanji Street, 4th Floor, Greater Bombay Mumbai Maharashtra-400003	Gold and Gold Alloys. Jewellery/Artefacts Fitness and Marking Specification	IS 1417 : 1999
3	7858102	20-07-2009	A to Z Polymers Plot No. 11, Somnath Co-op Inds. Society Ltd., Somnath Road, Village Dhabel Damann Daman Daman & Diu 396210	Fittings for rigid non-metallic conduits	IS 3419 : 1988

1	2	3	4	5	6
4	7854393	02-07-2009	Responsive Industries Limited Village Betegaon, Mahagaon Road, Near Gaushala Boisar-E, Thane, Boisar, Maharashtra-401501	Specification for unbacked flexible PVC flooring	IS 3462 : 1986
5	7857605	20-07-2009	Shri Solar System, K-43, Behind Taj Hotel, Opp. Fresh-up Bakery, MIDC Nashik Ambad, Maharashtra-422010	Solar flat plate collector- Specification : Part I Requirements	IS 12933 : Part 1 : 2003
6	7856704	06-07-2009	Desire Jewels Pvt. Ltd., 404, Mangal Bhavna Bldg., 4th Floor, 14th Road, Khar (W), Greater Bombay, Mumbai, Maharashtra-400052	Gold and Gold Alloys, Jewellery/Artefacts- Fineness and Marking- Specification	IS 1417 : 1999
7	7856603	06-07-2009	Sanskriti Jewels, Chandrabhan Bungalow, Geeta Nagar, Phase 7, Under Flyover, Bhayander (E) Thane, Bhayander, Maharashtra-401105	Gold and Gold Alloys, Jewellery/Artefacts -Fineness and Marking -Specification	IS 1417 : 1999
8	7854595	02-07-2011	Almas Jewellers 41 B.J. Road, Firdoush Manzil Basement, Bandstand, Bandra (W), Greater Bombay, Mumbai Maharashtra-400050	Gold and Gold Alloys, Jewellery/Artefacts- Fineness and Marking -Specification	IS 1417 : 1999
9	7858304	21-07-2009	Guardian Castings Pvt. Ltd., Gath No. 116/120, Village Abhitghar, Wada-Shahpur Road, Tal. Wada, Dist. Thane, Wada Maharashtra-421303	Carbon steel cast billet ingots, billets, blooms and slabs for rerolling into steel for general structural purposes	IS 2830 : 1992
10	7854902	03-07-2009	Kishco Limited, Plot No. E 19/B & C MIDC, Sinnar Industrial Area, Nashik Malegaon, Maharashtra-422113	Domestic Pressure Cookers- Specification	IS 2347 : 2006
11	7858708	21-07-2009	Hitesh Jewellers, 7/9, DD Plaza, 3rd Agiyari Lane, 103/105, 1st Floor, Zaveri Bazar, Greater Bombay, Maharashtra-400003	Gold and Gold Alloys, Jewellery/Artefacts -Fineness and Marking -Specification	IS 1417 : 1999
12	7858506	20-07-2009	Bonito Impex Pvt. Ltd., Office No. 10, 2nd Floor, Dheeraj Heritage, S.V. Road, Milan Subway Junction, Greater Bombay, Santacruz (W), Maharashtra-400054	Gold and Gold Alloys, Jewellery/Artefacts -Fineness and Marking- Specification	IS 1417 : 1999
13	7858405	21-07-2009	Guardian Castings Pvt. Ltd., 109, Mahendra Chambers, W. T. Patil Marg, Chembur, Mumbai-400071, Greater Bombay Chembur, Maharashtra 400071	Carbon Steel Cast Billet Ingots, Billets, Blooms and Slabs For Re-rolling into Low Tensile Structural Steel-Specification	IS 2831 : 2001

1	2	3	4	5	6
14	7858001	20-07-2009	Guardwel Industries Pvt. Ltd., Rajhans Indl. Complex,  Vasai East, Maharashtra-401208	Safe deposit locker cabinets- Specification Chinchpada, Gokhivare, Thane	IS 5244 : 1991

[No. CMD/13 : 11]

P. K. GAMBHIR, Dy. Director General (Marks)

नई दिल्ली, 7 नवम्बर, 2008

का. आ. 3053 — भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं :-

## अनुसूची

क्रम सं.	स्थापित भारतीय मानक(कों) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हों, की संख्या	स्थापित तिथि
(1)	(2)	(3)	(4)
1	आईएस 15803 : 2008 श्वसन संरक्षी युक्तियाँ—स्वतः पूर्णबंद परिपथ श्वसन उपकरण, रसायन ऑक्सीजन (KO <sub>2</sub> ) टाइप, स्वतः उत्पादन, स्वतः रेस्क्युर्स—विशिष्ट	—	3 नवंबर, 2008

इस भारतीय मानक को प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों: नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयंबटूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में विक्री हेतु उपलब्ध हैं।

[संदर्भ : सीएचडी 8/आई एस 15803]

ई. देवेन्दर, वैज्ञानिक-एफ (रसायन)

New Delhi, the 7th November, 2008

S.O. 3053. - In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each :

## SCHEDULE

Sl. No. & Year of the No. Indian Standard Established	No. & year of Indian Standards, if any, Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)
1 IS 15803 : 2008 Respiratory Protective Devices—Self Contained Closed Circuit Breathing Apparatus; Chemical Oxygen (KO <sub>2</sub> ) Type, Self Generating, Self Rescuers—Specification	—	3 November, 2008

Copy of this Standard is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: CHD 8/IS 15803]

E. DEVENDAR, Scientist-F (Chemical)



नई दिल्ली, 7 नवम्बर, 2008

क्र. आ. 3054.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्थापित हो गए हैं :-

## अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिरिक्त भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1	आई एस 11255 (भाग 3) : 2008 स्थिर स्रोतों से उत्सर्जन को मापने की पद्धतियां भाग 3 प्रवाह दर (पहला पुनरीक्षण)	—	30 अगस्त 2008

इस भारतीय मानक की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुंबई तथा शाखा कार्यालयों अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयंबटूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध है।

[संदर्भ : सीएचडी 32/आई एस 11255 (भाग 3)]

ई. देवेन्दर, वैज्ञानिक एफ (रसायन)

New Delhi, the 7th November, 2008

S.O. 3054.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987 the Bureau of Indian Standards, hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established in the date indicated against each :

## SCHEDULE

Sl. No.	No. & Year of the Indian Standards Established	No. & Year of Indian Standards if any, Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1	IS 11255 (Part 3):2008 Methods for Measurement of Emissions from stationary sources Part 3 Flow Rate (first revision)	—	30 August 2008

Copy of this Standard is available for sale with the Bureau of Indian Standards, aManak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref. CHD 32/IS 11255 (Part 3)]

E. DEVENDAR, Scientist F (Chemical)

कोयला मंत्रालय

शुद्धिपत्र

नई दिल्ली, 6 नवम्बर, 2008

क्र. आ. 3055.—केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुये, कोयला मंत्रालय की अधिसूचना संख्यांक क्र. आ. 2191 जो भारत के राजपत्र भाग II, खंड 3, उपखंड (ii) तारीख 9 अगस्त, 2008 में प्रकाशित की गई थी का संशोधन करती है, अर्थात् :-



उपगत सभी व्यय, सरकारी कंपनी द्वारा वहन किये जाएंगे और इसी प्रकार, निहित उक्त भूमि में या उस पर के उक्त अधिकारों के लिए या उसके संबंध में जैसे अपीलें आदि विधिक कार्यवाहियों की बाबत उपगत, सभी व्यय भी, सरकारी कंपनी द्वारा वहन किये जाएंगे ;

3. सरकारी कंपनी, केन्द्रीय सरकार या उसके पदधारियों की, ऐसे किसी अन्य व्यय के संबंध में, क्षतिपूर्ति करेंगी जो इस प्रकार, निहित उक्त भूमि में या उस पर के पूर्वोक्त अधिकारों के बारे में, केन्द्रीय सरकार या उसके पदधारियों द्वारा या उनके विरुद्ध किन्हीं कार्यवाहियों के संबंध में आवश्यक हो ;
4. सरकारी कंपनी को, केन्द्रीय सरकार के पूर्व अनुमोदन के बिना, भूमि और अधिकार को किसी अन्य व्यक्ति को अंतरित करने की शक्ति नहीं होगी; और
5. सरकारी कंपनी, ऐसे निर्देशों और शर्तों को, जो केन्द्रीय सरकार द्वारा, जब कभी आवश्यक हो, उक्त भूमि के विशिष्ट क्षेत्रों के लिए दिए जाएं या अधिरोपित किये जाएं, पालन करेगी ।

[सं. 43015/1/2006-पीआरआईडब्ल्यू-1 (वाल्सूम-II)]

एम. शाहाबुद्दीन, अवर सचिव

### ORDER

New Delhi, the 10th November, 2008

**S.O. 3056 .—**Whereas, on the publication of the notification of the Government of India, in the Ministry of Coal, vide number S.O.1214 dated 29th May, 2008 published in the Gazette of India, Part II, section 3, sub-section (ii), dated the 31st May, 2008, issued under sub-section (1) of Section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the land and all rights in or over such land described in the Schedule appended to the said notification (hereinafter referred to as the said lands) vested absolutely in the Central Government free from all encumbrances under sub-section (1) of Section 10 of the said Act;

And, whereas, the Central Government is satisfied that the Eastern Coalfields Limited, Sanctoria, District Burdwan, West Bengal, (hereinafter referred to as the Government Company) is willing to comply with such terms and conditions as the Central Government thinks fit to impose in this behalf;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 11 of the Coal Bearing Areas (Acquisition and Development) Act, 1957, the Central Government hereby direct, that the said lands and rights so vested shall with effect from 31st May, 2008, instead of continuing to so vest in the Central Government, shall vest in the said Company, subject to the following terms and conditions, namely:—

1. The Government Company shall reimburse to the Central Government all payments made in respect of compensation, interest, damages and the like, as determined under the provisions of the said Act;
2. A Tribunal shall be constituted for the purpose of determining the amounts payable to the Central Government by the Government Company under conditions (1) and all expenditure incurred in connection with any such Tribunal and persons appointed to assist the Tribunal shall be borne by the Government Company and similarly, all expenditure incurred in respect of all legal proceedings like appeals, etc., for or in connection with the said rights, in or over the said lands, so vesting, shall also be borne by the Government Company;
3. The Government Company shall indemnify the Central Government or its officials against any other expenditure that may be necessary in connection with any proceedings by or against the Central Government or its officials, regarding the rights in or over the said lands so vesting;
4. The Government Company shall have no power to transfer the said lands and rights to any other person without the previous approval of the Central Government; and.
5. The Government Company shall abide by such direction and conditions as may be given or imposed by the Central Government for particular areas of the said lands, as and when necessary.

[No. 43015/1/2006-PRW-1 (Vol.II)]

M. SHAHABUDEEN, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 15 अक्टूबर, 2008

का. आ. 3057.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मै. बी.सी.सी. एल. के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नं. 1, धनबाद के पंचाट (संदर्भ सं. 97/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-10-2008 को प्राप्त हुआ था।

[सं. एल-20012/461/1998-आईआर(सी 1)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 15th October, 2008

S.O. 3057.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 97/1999) of the Central Government Industrial Tribunal Labour Court, No. 1, Dhanbad, now as shown in the Annexure, in the Industrial dispute between the employers in relation to the management of M/s BCCL, and their workman, which was received by the Central Government on 15-10-2008.

[No. L-20012/461/1998-IR(C-1)]

SNEH LATA JAWAS, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, NO. 1 AT DHANBAD

Present : Shri H.M. Singh,  
Presiding Officer

In the matter of an Industrial Dispute under Section  
10(1)(d) of the I.D. Act, 1947.

Reference No. 97 of 1999

**Parties** : Employers in relation to the  
management of Benidih Colliery of  
Block-II Area of M/s. BCCL

AND

Their Workman

**Appearances** :

On behalf of the employers : Mr. R. N. Ganguly,  
Advocate.

On behalf of the workmen : Mr. K.  
Chakravorty,

Advocate.

**State** : Jharkhand **Industry** : Coal

Dated, Dhanbad, the September, 2008.

#### AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following

dispute to this Tribunal for adjudication vide their order No. L-20012/461/98-IR (C-1), dated, the 4th June, 1999.

#### SCHEDULE

"Whether the action of the management in not referring the concerned workman Sh. Biswanath Gour to the Apex Medical Board of the company for the assessment of his approximate age on the ground of different recording of age in different record of the company and objection raised in the service excerpt is proper and verified? If not, to what relief the concerned workman is entitled?"

2. The case of the workman as disclosed in the W.S. filed by the sponsoring union on behalf of the workman is that the concerned workman Biswanath Gaur had been working as a permanent workman at Benidih Colliery since long with unblemished record of service and at the time of his appointment on 12-1-1974 his age was recorded as 22 years in the statutory Form 'B' Register. The management issued the I.D. Card to the workman concerned showing his age as 22 year as on 12-1-1974. The age of the concerned workman was also recorded as 22 years on 12-1-1974 in the provident fund record. The date of birth recorded as 31-1-1936 in the service excerpt was strongly objected by the concerned workman being illegal and he had specifically stated his age as 22 years as on 12-1-1974. The workman also further stated that as per settled law and policy decision of the management it is mandatory on the part of the management either to accept his age as stated by the concerned workman in the service excerpt or to refer him to the Medical Board for determination of his age as per Medical Jurisprudence. However, the management referred the concerned workman to the Apex Medical Board for determination his age but unfortunately the Apex Medical Board refused to determine the age of the concerned workman on the ground that he has since been retired from service. It has been stated on behalf of the workman that the management illegally and arbitrarily superannuated the concerned workman on 31-1-1996. Thereafter the union of the concerned workman represented before the management against illegal and arbitrary superannuation but without any effect. The union on behalf of the concerned workman raised an industrial dispute before the ALC (C) Dhanbad which ultimately resulted reference to this Tribunal for adjudication. It has been prayed on behalf of the workman that an Award be passed directing the management to refer the concerned workman for determination of age and to reinstate the concerned workman with full back wages.

3. In the W.S. filed by the management it has been submitted that the present reference is not legally maintainable. It has been stated that the Form B Register is maintained under Section 48 of the Mines Act and in the Form B Register of Benidih Open Cast project at serial No. 1654 the date of birth of the concerned workman is mentioned as 31-1-1936 and the concerned workman has

put his signature in token of acceptance of the correctness of recording of all the particular made in the Form B Register. In terms of clause 37 of the Certified Standing Order applicable to the industry the date of birth recorded in the Form B Register is the conclusive evidence to decide the time of his superannuation. Accordingly the concerned workman was superannuated w.e.f. 31-1-96 as he completed 60 years of age on that date. The management has further stated that the concerned workman did not raise any objection in the year 1987. Consequently in the service excerpt his date of birth was recorded as 31-1-1936. He raised dispute demanding the correction of his date of birth at the fag end of his retirement. Thereafter the local management referred the matter to the higher management for taking decision. But by the time the matter received attention of the higher authorities, he had already crossed the age of superannuation and he has already superannuated w.e.f. 31-1-1996. Therefore, the demand for correction of his date of birth on the basis of medical examination by the Apex Medical Board after his superannuation did not and cannot arise. It has been stated that the demand of the concerned workman after his superannuation is illegal and unjustified.

4. The management has further submitted that the JBCI circular No. 76 has been issued for taking into consideration different aspects for correction of date of birth in case any demand is made within the reasonable time from the date of his appointment. Accordingly they have prayed to pass an Award rejecting the claim of the concerned workman.

5. Both the sides have filed rejoinder admitting and denying each other claim mentioning the paras in this respect.

6. Ld. Counsel for the workman argued that date of birth of the concerned workman has been mentioned as 12-1-74 in the I.D. Card which has been issued by the management. The same has been marked as Ext. W-1. On the other hand Ld. Counsel for the management argued that the original I.D. Card has not been filed instead its photo copy has been filed with change of date of birth. There is force in the argument of the Ld. Counsel for the management why the concerned workman has not filed the original I.D. Card for the reasons best known to the concerned workman. Regarding this photo copy the concerned workman stated in his cross-examination in chief that this photo copy of the I.D. Card marked as Ext. W-1 is subject to the production of original of the same at the earliest but the original has not been filed by the concerned workman. Management has filed photo copy of the Service Excerpt of the concerned workman which shows date of birth of the concerned workman as 31-1-36 copy of which has been given to the concerned workman as per Ext. W-2. The concerned workman is a literate person because he has signed in the above Ext. W-2. The concerned workman stated that he has moved application for change of his

date of birth but his application shows that this has been moved on 11-2-99 after his superannuation because the concerned workman has been superannuated on 14-1-96. Ld. Counsel for the workman has argued that he has not been medically examined regarding his age and when dispute has arisen he should have been referred to the Medical Board. The management has referred him to the Medical Board but the Medical Board has not conducted the medical examination on the ground that the concerned workman has already superannuated. When there is documentary evidence an application has been moved by the concerned workman after superannuation shows that he wants to take benefit of the Company's S.O. by getting medically examined and there is no use when he has already superannuated.

7. Management has filed Form B Register which is maintained at the time of appointment of the workman. Ld. Counsel for the workman argued that in the Form B Register the name of MW-1 does not find place which he has admitted in his cross-examination. But by going through cross-examination of M-1 it shows that there are two more form B Register in that Colliery and Ext. M-1 is Book No. 3 and which has come after those two registers. So his name is not there. I do not find force in the argument advanced on behalf of the concerned workman.

8. Ld. Advocate for the workman has referred to a decision reported in AIR 1982 Allahabad 385 in which Hon'ble Allahabad High Court laid down the following:-

"The averments contained in the written statement cannot take the place of proof unless evidence is produced by the interested party."

He has also referred to a decision reported in 2005 (105) FLR 1067 in which Hon'ble Supreme Court laid down pleadings are no substitute for proof. Ld. Counsel for the workman also referred to another decision reported in A.I.R. 1940 Patna 683 in which Hon'ble High Court of Patna laid down that the witness which has not been cross-examined his evidence must be accepted. In this context Ld. Counsel for the workman argued that as his witness has not been cross-examined the evidence of his witness should be accepted. I find no force in the argument of the Ld. Counsel for the workman because date of birth has to be proved by cogent evidence and when there is documentary evidence verbal evidence has got no value.

9. In this connection Ld. Counsel for the management has referred to a decision reported in 2005 Lab I.C. 3613 (A) in which Hon'ble Supreme Court laid down the following:-

"(A) Constitution of India, Art. 16- Date of birth- Public employment-correction of- Application for- must be made strictly in accordance with rules prescribed - In absence of rules, application to be made at earliest - employee must show irrefutable proof relating to his date of birth-Employees challenging order of retirement based on wrong dated of birth-Service

Book signed by employee-Date of birth entered therein not challenged by employee at any time-Employee producing document issued after his retirement in support- High court holding date claimed by employee to be proper on erroneous view that service record was not produced-Order liable to be set aside.

2003 All LJ 2379 reversed.

Secy. & Commr. Home Dept. v. Kirubakaran, 1993 AIR SCW 3333. AIR 1993 SC 2647 State v. Ramanath Patnaik, 1997 AIR SCW 2370 : AIR 1997 C 2452 : State of T.N. v. Venugopalan, 1994 AIR SCW 3947; 1994 Lab IC 2498 State of UP v. Gulaichi, 2003 AIR SCW 3775 AIR 2003 SC 4209 : 2003 Lab IC 2641 and State v. S.C. Chadha. (2004) 3 SCC 394. Foll

9A. I.d. Counsel for the management has also referred to another decision reported in Lab IC. Vol.2, 2008 page 1666 in which Hon'ble Supreme Court held the following:-

"A person retired automatically on the date when he completes the age of superannuation - Need not be given opportunity of hearing."

10. In view of the facts, circumstances and citations discussed above I find no merit of the case of the workman. Accordingly the following Award is rendered:-

"The action of the management in not referring the concerned workman Sh. Biswanath Gour to the Apex Medical Board of the company for the assessment of his approximate age on the ground of different recording of age in different record of the company and objection raised in the service exempt is proper and justified. Consequently, the concerned workman is not entitled to get any relief."

H. M. SINGH, Presiding Officer.

नई दिल्ली, 21 अक्टूबर, 2008

का. आ. 3058. ---औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केनरा बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय इरनाकुलम के पंचाट (संदर्भ सं. 322/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-10-2008 को प्राप्त हुआ था।

[सं. एल 12012/163/2000-आई.आर.(बी-II)]

राजिन्द कुमार, डेस्क अधिकारी

New Delhi, the 21st October, 2008

S.O. 3058.---In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947), the Central Government hereby publishes the award (Ref. No. 322/2006) of the Central Government Industrial Tribunal-cum-

Labour Court, Ernakulam as shown in the Annexure, in the Industrial Dispute between the management of Canara Bank and their workman, received by the Central Government on 21-10-2008

[No. L-12012/163/2000-IR(B-II)]  
RAJINDER KUMAR, Desk Officer

## ANNEXURE

### IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present : Shri. P. L. Norbert, B.A., LL.B., Presiding Officer

(Friday the 1st day of August, 2008/10th Shrawana 1930)

I. D. 322/2006

(I. D. 3/2001 of Labour Court, Ernakulam)

Workman : T.D.Baby, Thekkethala House,  
K. Kunnu P.O., Melur,  
Chalakkudy - 680311.  
By Adv. K. V. Bhadra Kumari.

Management : The Deputy General Manager,  
Canara Bank, Circle Office,  
Trivandrum - 695 039.  
By Adv. Raju Abraham Pulpara.

This case coming up for hearing on 25-07-2008, this Tribunal cum-Labour Court on 1-8-2008 passed the following.

## AWARD

This is a reference made under Section 10(1)(d) of Industrial Disputes Act. The reference is :-

"Whether the action of the management of Canara Bank in inflicting the punishment of making the workman, Shri T.D.Baby, Peon Canara Bank Chalakkudy to compulsory retire with effect from 20-6-1999 is justified? If not, what relief the workman is entitled to?"

2. Facts of the case in brief are as follows:  
Sri. T.D.Baby, the workman was a Peon of Canara Bank, Chalakkudy branch. He joined service on 26-3-1988. While so a charge sheet was issued to him on 21-08-1998 alleging that he had withdrawn an amount of Rs. 40,000/- from NRE accounts of 2 NRE S.B account holders by using their cheque leaves which were stealthily removed by him from their cheque books while forwarding the cheque books to them and using those cheque leaves he withdrew Rs. 40,000/- by forging the signatures. An enquiry proceeding was initiated. He was found guilty of the charges and he was punished with compulsory retirement. It is under challenge.

3. According to the workman though he was not involved in the alleged misappropriation of money, due to the harassment and coercion of the management he remitted Rs. 30,000/- and gave a statement of admission of guilt. The enquiry was conducted without complying with the principles of natural justice. The Enquiry Officer came to the conclusion that the workman is guilty without valid proof. The Disciplinary Authority imposed punishment of dismissal which was converted into compulsory retirement by the Appellate Authority. The workman sometimes had helped illiterate customers to draw cheques. The Enquiry Officer was carried away by the identification of handwriting in the cheques by some of the management witnesses. But the Enquiry Officer is not a handwriting expert to compare the handwriting. There is no evidence to show that the workman had received payments under the cheques. The persons who had complained to the bank were not examined. The management witnesses have stated that the drawees of the cheques were present on respective dates of encashment of cheques. The punishment of compulsory retirement is illegal, disproportionate and is an act of victimisation.

4. According to the management the workman who was a Peon was entrusted with cheque books for sending them to account holders by post. The workman took away three cheque leaves and made use of two cheque leaves for fraudulently withdrawing money from the accounts of two customers. When the workman was questioned on detection of the fraud he remitted Rs. 30,000/- and the balance amount of Rs. 10,000/- was remitted by the accomplice. A preliminary enquiry was conducted by an officer of the bank. Thereafter a charge sheet was issued to the workman and a domestic enquiry was conducted. The workman had given a statement of admission of guilt to the Manager. 13 witnesses were examined and 42 documents were marked on the side of the management. The workman was defended by a defence representative. The management witnesses were cross-examined. Lists of witnesses and copies of documents were given to the workman on time. The Enquiry Officer had complied with the principles of natural justice. It is on the basis of the evidence that was adduced before the Enquiry Officer a finding of guilt was recorded by the Enquiry Officer. The copy of the report was given to the workman and Disciplinary Authority heard him regarding punishment. Though the Disciplinary Authority imposed the punishment of dismissal without notice, the Appellate Authority converted it into compulsory retirement on humanitarian grounds. The punishment is in proportion to the gravity of the charges. There is no reason to interfere either with the findings or punishment.

5. In the light of the above contentions the following points arise for consideration :—

1. Are the findings sustainable?

2. Is the punishment proportionate?

The evidence consists of oral testimony of MW1 and Ext. M1 Enquiry File on the side of the management and WW1 and WW2 on the side of the workman.

6. Point No. 1:—The workman Sri. T.D. Baby was a Peon of Canara Bank, Chalakkudy branch from 1988 to 1999. Ext. ME-1 is the charge sheet. The allegations are that he had stealthily removed three cheque leaves from two cheque books handed over to him by the Tapal Section Clerk for despatch. He utilised two cheques for drawing amounts of Rs. 25,000 and Rs. 15,000 respectively by forging the signatures of two account holders who were then working abroad. To the charge sheet the workman did not reply. But he had given a statement of admission of guilt to the Manager (Ext. ME-21). No doubt later during domestic enquiry he put forward a contention that Ext. ME-21 statement was obtained by the management by coercion and threat. However, he has not complained to senior officers of the bank regarding Ext. ME-21. That apart when charge sheet was read out and asked about the allegations therein by the Enquiry Officer the workman had admitted the guilt. The case of the workman that the statement is not voluntary is only a subsequent thought. Despite the admission management proceeded to prove the charges through an enquiry. 13 witnesses were examined and 42 documents were marked on the side of the management. Though the workman was offered opportunity to adduce defence evidence he did not want to examine any witness or tender any document.

7. MW-2 Smt. E. M. Sumathy was the clerk at Chalakkudy branch working in the Tapal Section. According to her she had handed over two cheque books for sending them to account holders. MW-3 Smt. K. S. Girijabhai was supervisor of Tapal Section. According to her she had checked the Tapal sent to Sri. C. C. Sebi. She identified the handwriting in Ext. ME-7 cheque as that of the workman. Ext. ME-5 is the cheque book issue register folio 186. Ext. ME-6 is Tapal Register folio 25 of the date 06-10-1997. It shows that the cheque book was issued to Sri. C. C. Sebi and sent to him in the Overseas address. Ext. ME-33 is Tapal Register relevant page of the date 23-08-1997. It shows that a cheque book was sent to Sri. P. K. Baby in his foreign address. Later Sri. C. C. Sebi sent Ext. ME-13 letter and Ext. ME-12 lawyer notice to the bank stating that Rs. 25,000 was withdrawn from his NRE account fraudulently by using cheque No. 9547222 by someone. Similarly Sri. P. K. Baby sent Ext. ME-27 letter to the bank informing the bank that when he received the cheque book two cheque leaves bearing cheque numbers 080342 and 080343 were missing and he called for details of his NRE account. Out of the two cheques to Sri. P. K. Baby, taken out of the cheque book issued, cheque No. 080342 is one of the disputed cheques used for fraudulent transaction and withdrawal of Rs. 15,000.

8. MW-2 the Sr. Manager of the branch had met the NRE account holders when they returned to India and confirmed that they had not authorised withdrawal of money from their accounts.

9. MW-10 Sri T.V. Prabhakaran a Peon of the same branch deposed that cheque No. 9547222 was handed over to him by the workman for encashment. MW-10 wrote token No. in the cheque and received Rs. 25,000/- from the cashier. The amount was given to the workman who returned Rs. 5,000/- to MW-10. Similarly cheque No. 080342 was handed over to him by the workman for the purpose of encashment. He wrote token No. 61 and presented the cheque and obtained payment of Rs. 15,000/-. This amount was also given to the workman, but Rs. 5,000/- was returned to him. The witness has identified the handwriting in both cheques as resembling the handwriting of the workman. He admitted having remitted Rs. 10,000/- by Ext. ME-42 credit slip to make good the loss on account of the fraudulent transaction, being the money received by him from the workman. This is the admission in chief examination of MW-10. He also admitted that he had given Exts. ME-22, 25 and 38 statements to the Investigating Officer. But in the cross-examination he turned round and said that he had given Exts. ME-22, 25 and 30 statements to the Investigating Officer due to the threat of the Manager that failure to give a statement would ensue in police complaint and loss of job. He also denied in the cross-examination that the cheques were encashed or amounts were given to the workman. In fact during cross-examination he was asked about the circumstances under which he happened to pay Rs. 10,000/- to the bank and issue Exts. ME-22, 25 and 30 statements to the Investigating Officer. Thus the fact remains that MW-10 had encashed 2 cheques entrusted by the workman and paid the cheque amounts to the workman.

10. MW1 Sri M.C. Retnakaran was working in cash department at the relevant time. He made payment of Ext. ME-7 cheque amount of Rs. 25,000/-. He identifies the handwriting in the cheque as resembling the handwriting of the workman. MW-1 had given a statement, Ext. ME 20 to the Investigating Officer.

11. MW-4 Smt. M.R. Malathy was clerk in the NRE S.B. Account Section. She had given Ext. ME-16 statement to the Investigating Officer. She identifies the handwriting in Ext. ME-7 cheque as resembling to that of the workman. She denied that she had issued token No. 46 concerning Ex. ME-7 cheque.

12. MW-6 is the Clerk in cash department. He had given Ext. ME 37 statement to the Investigating Officer. According to him Ext. ME-31 NRE cheque for Rs. 15,000/- was presented to him for payment and the amount was paid by him. He identifies the handwriting in Ext. ME-31 cheque as resembling the handwriting of the workman. However, in the cross-examination he stated that the last

sentence in Ext. ME-37 statement given to the Investigating Officer was written up after it was signed by him. Whatever be the correctness of Ext. ME-37 statement given to Investigating Officer he had admitted before the Enquiry Officer that cheque for Rs. 15,000 / - was presented to him for payment and amount was paid by him and he has also identified the handwriting in Ext. ME-31 cheque.

13. MW-7 is clerk working in deposit section. Cheque No. 080342 for Rs. 15,000 was passed by him. He says that he had not issued token No. 61 in respect of the cheque. He also says that other than Saving Bank Supervisor Smt. Vijayalakshmi and himself, nobody else could have issued the token. He also says that the handwriting in Ext. ME-31 cheque resembles the handwriting of the workman. He had given Ext. ME-35 statement to the Investigating Officer.

14. MW-8 is Smt. F. Vijayalakshmi, an officer of the bank. She admits that she had given Exts. ME-18 and 36 statements to the Investigating Officer. According to her Ext. ME-7 cheque was passed by the Sr. Manager as the cheque was taken by her to the Sr. Manager due to certain doubt about the signature in the cheque. She denies that she had issued token in respect of Ext. ME-7 cheque. She admits that Ext. ME-31 cheque was passed by her. She says that the signature in the cheque had a shaky appearance. She had enquired with the bearer of the cheque and he was asked to sign the cheque on its reverse side. Thereafter the cheque was passed. She also says that the payee of two cheques had been to bank for encashing the two cheques and she had enquired about the dissimilarity in signatures. But she is not able to identify the bearer of the cheque. She was then declared hostile at the request of the Presenting Officer. However, the witness was not willing to give any further answers with regard to the incident. The learned counsel for the workman heavily relied on the testimony of this witness on the ground that the witness had seen the payees in the counter and she had verified the signatures in the two cheques. One of the payees admittedly I.L. George was examined as MW9. He stated that he had not been to bank on 04-11-1997 to withdraw any amount from the account of Sri. C. C. Sebi, who is his brother-in-law. He also stated that his brother-in-law had not drawn Ext. ME-7 cheque. The witness also stated that he had not signed on the reverse side of Ext. ME-7 cheque. This cuts at the very root of the statement of MW-8 that Ext. ME-7 cheque was signed by the bearer of the cheque on its reverse side and the payee had been to the bank for encashment. Except MW-8 other witnesses identified the handwriting of the workman in Ext. ME-7 and 31 cheques.

15. MWs-11 and 12 are Branch Managers and Sr. Manager of Chalakudy branch. They say that the handwriting in Exts. ME-7 and 31 is that of the workman. MW-13 is the Investigating Officer who had conducted the preliminary enquiry and submitted Ext. ME-3 report to the management.



16. The oral and documentary evidence are overwhelming to show the fraudulent transaction by the workman. The oral testimony of MWs-2 and 3 as well as Exts.ME-5, 6 and 33 records go to show that the cheque leaves could have been taken away only by the workman and none else. The account holders had not complained that the postal covers in which the cheque books were sent were tampered by the postal officials during transit. Thus the circumstances point the finger to the workman. Added to that the very admission of the workman before the management as well as before the Enquiry Officer pin him down to the charges. Therefore, I find that the workman is guilty of the charges and the Enquiry Officer has rightly found him so on the strength of the materials on record.

17. Point No.2:- The punishment imposed is compulsory retirement. He was given retiral benefits. The nature of the misconduct is grave. Employees of such character cannot be retained in a banking institution where public money is handled. The bank has to maintain its reputation and command the confidence of customers. This would be jeopardised by mischievous acts of the kind in question. I don't think the management could be asked to show more leniency than compulsory retirement ordered by the appellate authority. No doubt the family circumstances of the workman is poor. He has many dependants at home. These mitigating circumstances were taken into account by the appellate authority which persuaded it to convert dismissal to compulsory retirement with superannuation benefits. There is no reason to show any further leniency in the matter.

In the result an award is passed finding that the action of the management of Canara Bank in inflicting the punishment of compulsory retirement w.e.f. 02-06-1999 is legal and justified and the workman is not entitled for any relief.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 1st day of August, 2008.

P. L. NORBERT, Presiding Officer.

#### APPENDIX

##### Witness for the Management

MW1 - 16-06-2003 - Sri.M.C.Retnakaran.

##### Witnesses for the workman

WW1 - 16-09-2003 - T. D. Baby

WW2 - 16-09-2003 - S. Ramakrishnan.

Exhibit for the workman - Nil

Exhibit for the Management - Enquiry File.

M1 - Enquiry File and Casual labour Service Card.

नई दिल्ली, 22 अक्टूबर, 2008

का. आ. 3059.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोक्तों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, इरनाकुलम के पंचाट (संदर्भ सं. 166/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-10-2008 को प्राप्त हुआ था।

[सं. एल-12012/324/1995-आई.आर.(बी-1)]

राजिन्दर कुमार, डेस्क अधिकारी

New Delhi, the 22nd October, 2008

S.O. 3059.—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947), the Central Government hereby publishes the award (Ref. No. 166/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure, in the Industrial Dispute between the management of Central Bank of India and their workman, which was received by the Central Government on 22-10-2008.

[No. L-12012/324/1995-IR(B-II)]

RAJINDER KUMAR, Desk Officer

#### IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present: Shri P. L. Norbert, B.A., LL.B., Presiding Officer

(Wednesday the 6th day of August, 2008/15th Sravana 1930)

I. D. No. 166/2006

(I. D. No. 09/1997 of Labour Court, Ernakulam)

Union : The General Secretary,  
Central Bank of India Staff Union  
(Kerala), 41/1757, Paramara  
Shopping Centre, Ernakulam,  
Cochin - 682 018.  
By Adv. Sri.H.B.Shenoy.

Management : The Regional Manager,  
Central Bank of India, Regional  
Office, 2nd Floor, Geo Towers,  
Cochin - 682 016.  
By Adv. M/s.Menon & Pai.

This case coming up for hearing on 28-07-2008, this Tribunal-cum-Labour Court on 06-08-2008 passed the following :—

#### AWARD

This is a reference made under Section 10(1)(d) of Industrial Disputes Act. The reference is :—

"Whether the action of the Management of Central Bank of India in imposing the punishment of

withholding six annual increments with cumulative effect and compulsory transfer to Kunnicoode branch against the workman Shri M.B. Muralidhara Menon on certain alleged charges is legal and justified? If not, to what relief the said workman is entitled?"

2. Facts of the case in brief are as follows:- The workman Sri. M. P. Muralidhara Menon joined the service of Central Bank of India as a Clerk. While he was working at Mattancherry branch he was served with a memo on 24-12-1993 alleging that he had disobeyed the instructions of his superior officer and behaved in a derogatory manner to the officer. On the same day in the evening the same officer was assaulted by the workman. An enquiry was conducted and he was found guilty and was dismissed from service. The workman filed an appeal and the appellate authority taking into consideration the mitigating circumstances modified the punishment into stoppage of 6 increments with cumulative effect and ordered to transfer him from Mattancherry branch to Kunnicoode branch in Trivandrum region. Aggrieved by the said action of the management the workman has raised the dispute through union.

3. According to the union the enquiry is vitiated due to various reasons. The charge sheet issued to the workman was vague and the allegations were frivolous. A reasonable opportunity of defence was denied to the workman. He was not allowed to be assisted by a lawyer. The request of the workman for engagement of a lawyer was not referred to the Disciplinary Authority for decision. But the Enquiry Officer himself rejected the request. The Presenting Officer was a legally trained person. The documents on the side of the management were not properly proved before marking. Several questions put by the defence were not recorded by the Enquiry Officer. The findings of the Enquiry Officer are perverse and not based on materials on record. The punishment of stoppage of 6 increments with cumulative effect is illegal and unjust and against the provisions of first Bipartite Settlement. At any rate the punishment is shockingly disproportionate and excessive. So also the order of transfer to another branch in Trivandrum region is illegal and unjust. The Bipartite Settlement does not empower the management to impose such a punishment. Denial of wages and other benefits to the workman during the period of suspension amounts to punishment. An employee can be suspended only when an enquiry is pending or ordered. The workman was suspended even before issuing a charge sheet and hence the order of suspension is illegal.

4. According to the management the workman was issued with a memo of charges for disobeying the direction of an officer of the bank to send cheques and I.D.s. for clearance. The workman instead of obeying the direction of the officer behaved in a highly derogatory manner. The officer was assaulted by the workman questioning his

authority to direct the workman. It is a gross misconduct on the part of the workman and hence he was proceeded against. He was placed under suspension in the enquiry. The enquiry was conducted in accordance with the principles of natural justice. The employee was allowed to be represented by a union office bearer. List of documents and witnesses were given to the workman. He was also given copies of documents. He was allowed to compare copies of documents with the originals. The employee was given opportunity to cross-examine witnesses on management side. The workman examined one witness and got marked 25 documents on his side. Both sides submitted argument notes. Thus the enquiry was conducted in a fair and proper manner. He was found guilty by the Enquiry Officer. The disciplinary authority concurred with the findings and proposed punishment of dismissal. The workman was heard by the disciplinary authority regarding the proposed punishment. Thereafter the disciplinary authority ordered dismissal of the employee. In appeal the punishment was modified to stoppage of six increments with cumulative effect considering the pathetic condition of employee's family, the number of years of service, his age etc. No wages other than subsistence allowance was permitted by the disciplinary authority till re-instatement. However the period of suspension was treated as continuous service. A very lenient view was taken by the appellant authority. The workman was transferred to Kunnicoode branch in the interest of discipline in the establishment. It is not correct to say that the charges were vague. When the charges were read out to the workman and asked whether he had understood the same he answered in the affirmative. The request for appointment of a lawyer on defence side was rejected by the Enquiry Officer on the ground that the presenting officer was not a legally trained person and the allegations against the workman was very simple and not complicated and representation by the union secretary was sufficient. No objection was raised by the workman while marking documents on the side of the management. The findings are based on evidence on record. The punishment awarded is proportionate and does not call for any interference. It is the right of the management to suspend an employee before a charge sheet is issued to him. No interference either in the findings or punishments are warranted.

5. In the light of the above contentions the following points arise for consideration is :

1. Are the findings sustainable?
2. Is the punishment proportionate?

The evidence consists of the oral testimony of MW 1 and documentary evidence of EXT M1 on the side of the management and EXT W1 on the side of the union.

6. Point No.1:—The workman Sri M.B. Muralidhara Menon was a clerk working in the Clearing Department on

the relevant date of 24-12-1993 when the misconduct is said to have been committed. Sri P. S. Appukuttan Pillai was an officer of the Clearing Department. On 24-12-1993 he asked the workman to send cheques and D.Ds. for collection. The workman is said to have questioned the authority of Sri. Appukuttan Pillai to direct him. As per the charge sheet the workman deliberately delayed cheques and D.Ds. for clearance until 28-12-1993. When the matter was reported to the higher authority by Appukuttan Pillai a memo was issued to the workman on 24-12-1993. In the afternoon at about 5 p.m. the workman approached Sri Appukuttan Pillai when most of the staff had left the bank after the office hours, and assaulted him. Ext.M3 is the memo calling for explanation of the workman for disobeying the direction of a superior officer and misbehaving to a superior officer. The workman sent a reply which is Ext.M4. In the reply the workman denied the allegations and stated that when he received a memo he approached Sri. Appukuttan Pillai and enquired why he had complained against him. Thereupon Sri. Appukuttan Pillai manhandled the workman. This explanation of the workman was not satisfactory to the management. On 04-01-1994 he was suspended from service. Thereafter on 20-01-1994 a charge sheet was issued to him which is Ext.M8. The charges are:

- (1) The workman questioned the authority of his superior officer (Sri. Appukuttan Pillai) to direct him for sending cheques and D.Ds. for clearance and thus misbehaved.
- (2) The cheques and D.Ds. which were to be sent for clearance on 24-12-1993 were deliberately delayed by the workman and were sent for collection only 28-12-1993. This affected the interest of the customer.
- (3) Annoyed by the complaint of Sri Appukuttan Pillai and consequent to the memo issued, the workman manhandled Sri Appukuttan Pillai.

These acts of the workman is said to be misconduct falling under Clause 19.5(e)(g) and (j) of First Bipartite Settlement. The Enquiry Officer found him guilty of all the charges. This was confirmed by the disciplinary authority as well as the appellate authority.

7. The findings are challenged by the union on the ground that the Enquiry Officer has not properly considered the evidence in reaching the conclusions and that the workman was denied assistance of a lawyer which deprived him of an opportunity to effectively defend the charges. The Enquiry Officer instead of forwarding his request for assistance of a lawyer to the disciplinary authority, decided the issue by himself rejecting the request. This is illegal as per Clause 19.12 (a)(iii) of First Bipartite Settlement. The relevant portion of the provision reads: "..... with the bank's permission, by a lawyer". Ext.M 1 is the Enquiry file. Page 2 of Enquiry proceedings shows that the

workman had made a request for appointing a lawyer on the first day of sitting, but was rejected by the Enquiry Officer on the ground that the Presenting Officer was not a practising lawyer and he was only a junior management scale-I officer. He was therefore asked to take the assistance of someone else. Thus he was defended by the General Secretary of the Union. The workman had no cast at the time of request for a lawyer that the presenting officer was either a lawyer or a law graduate or a legally trained mind. He merely requested for the assistance of a lawyer. As per Clause 19.12 (a)(iii) of the settlement referred supra a decision on the request has to be taken by the disciplinary authority. However the Enquiry Officer did not forward the request to the disciplinary authority as it was made only on the first day of enquiry. Had it been sent to management early naturally the enquiry would have been adjourned until request was considered by the management. The Enquiry Officer was not informed either by the workman or by the management that the presenting officer was a law graduate. However before this court the union has produced Ext. W 1 leave record of the Presenting Officer. It shows that the presenting officer joined the service of bank on 09-05-1972 as clerk and his qualification is B.Com, LL.B., CAIIB. This document was not produced before the Enquiry Officer nor did anyone bring to the notice of the Enquiry Officer that the Presenting Officer was a law graduate. When the Enquiry Officer was examined before this court as MW 1 he said that he was not aware at the time of enquiry that the Presenting Officer was a law graduate. That apart it is not known whether the Presenting Officer at the time of joining service in 1972 had all the academic qualifications mentioned in Ext. W1 or whether one or more were acquired while in service and before the enquiry commenced. Unless these factors were brought to the notice of Enquiry Officer or the attention of management was drawn the request for assistance of a lawyer could not have been favourably considered either by Enquiry Officer or by management. Therefore the Enquiry Officer is not at fault. On the other hand the General Secretary of the Union participated in the enquiry, cross examined management witnesses and adduced defence evidence. Nine witnesses were examined and 23 documents were marked on management side and one witness was examined and 25 documents were marked on the side of the workman. Both sides had submitted argument notes at the end of evidence. At the commencement of enquiry lists of documents and witnesses were provided to the defence. Copies of documents were also furnished to the workman. He was given opportunity to compare copies of documents with their originals. Thus full opportunity was given to the workman to defend and adduce defence evidence. Though charges are for gross misconduct no complicated issues are involved requiring legal expertise. In the above circumstances denial of assistance of a lawyer has caused no prejudice to the workman. Therefore for that reason the enquiry is not vitiated.

8. Charge No. (1) is that the workman had disobeyed the instructions of his superior officer Sri P.S.Appukuttan Pillai to forward cheques and D.Ds. for collection. MW-1 is 'Sri Appukuttan Pillai and he has narrated the incident of 24-12-1993. MW-2 is the Accountant Sri M. Narayanan-kutty, MW-3 is K.M.Koshi, Assistant Branch Manager. Both of them heard the workman shouting at MW-1 questioning his authority to direct the workman. DW-1 was an officer of clearing department. He was on leave on 24-12-93. Ext.ME-4 is the reply of workman to the memo calling for explanation. The workman denied the incident. DW-1 is a sub Accountant, examined on the side of the workman. He was in charge of clearing department. But he was on leave on 24-12-93. Naturally no question was put to him about the incident, but only about the arrears of work in the section. Nobody else was examined on defence side. Therefore as against the evidence on management side there is no defence evidence to challenge the charge that he had disobeyed the instructions of a superior officer and behaved in a derogatory manner. As a result the Enquiry Officer found the workman guilty of charge No. (1) and the finding is based on materials on record.

9. The 2nd charge is that the workman was late to send the cheques and D.Ds. for clearance. He was entrusted with cheques and D.Ds. on 24-12-1993 for clearance. But he sent them only on 28-12-1993. According to MW-1 on 24-12-93 134 cheques were given to the workman for clearance. But the workman did not forward them as instructed by MW-1. Exts.M-12 to 21 are vouchers relating to 134 cheques. MW-2 the Accountant stated before the Enquiry Officer that he had handed over these cheques to the Clearing Department on the dates of vouchers i.e. on 21-12-1993, 22-12-1993 and 23-12-1993. DW-1 was actually in charge of the clearing section. On 24-12-1993 he was on leave. According to DW-1 (cross examination) on 24-12-1993 231 cheques were received in the clearing section. He says, that on an average every day 230 cheques were being received in the bank. He also admits that as per Exts.M-12 to 21 vouchers the cheques referred in the vouchers were lodged in clearing department. He admits that as per the register on 24-12-1993 231 cheques were received for clearance. The next working day was 27-12-1993. DW-1 had resumed duty on that day. Only 73 cheques were received on that day for clearance. But according to him other cheques might have reached clearing department in the A. N. of 23-12-1993. But MW-1 and 2 do not admit that. According to them all the 134 cheques in question were handed over to the clearing department on 24-12-1993 itself. It is relevant to note that in Ext.M-4 reply of the workman he does not say that cheques in question were not received in the clearing department either on 24-12-1993 or on the F.N. of 27-12-1993. He merely denies the allegations. No reply to the charge sheet was submitted. Thus 134 cheques and D.Ds. were sent for collection only on 28-12-1993. Naturally the

delay caused annoyance and inconvenience to the customers. It is a misconduct within Clause 19.5 (g) of the settlement. There is no infirmity in the finding of Enquiry Officer regarding Charge No.2.

10. Charge No. (3) is that on 24-12-1993 about 5 p.m. the workman assaulted MW-1. Hearing the cry of MW-1, MW-2 and 4 came to the rescue of MW-1 and prevented the worker. MW-2 was an accountant and MW-4, a sub-staff of the bank. They were not at the spot at the time of assault, but they were in the bank. When they reached the scene they found furniture and books lying scattered on the floor and the workman standing near MW-1. From the circumstances and appearance of MW-1 and workman they suspected that some untoward incident must have taken place at the instance of workman. MW-1 then narrated the incident to MW-2 and MW-4. They took away the workman from the room. MW-1 gave Ext. M-3 complaint to the Regional Manager. He also gave Ext.M-5 statement to the bank about the incident. MW-4 also gave Ext.M-10 statement to the bank. The case of workman in Ext. M-4 reply to the memo dated 24-12-1993 is that he had not misbehaved to MW-1. According to him it was MW-1 who had assaulted the workman when he approached MW-1 enquiring about the complaint given against him. Other than Ext. M-4 reply no evidence was adduced by the workman before the Enquiry Officer to substantiate his case that it was the officer who had assaulted him and not vice versa. It is important to note that the workman had not given a reply to the charge sheet dated 20-01-1994 (Ext.M8). The evidence on management side go to show that the allegation regarding physical attack on MW-1 is true.

11. There is sufficient evidence on record to conclude that the workman did commit the misconduct alleged against him. No evidence worth mentioning was adduced on the defence side to challenge the charge. Hence there is no reason to differ from the findings of Enquiry Officer.

12. **Point No.2** :—The punishment imposed by the disciplinary authority was dismissal from service. On appeal this was converted to stoppage of 6 increments with cumulative effect. According to the learned counsel for the union the punishment is harsh and excessive. It is seen from the appellate order page 6 that the appellate authority was moved by the pathetic condition of appellant's family, number of years of service in the bank, the age of the workman and his regret for the misconduct and so reduced the punishment from dismissal to stoppage of 6 increments with cumulative effect and also ordered to transfer him from Mattancherry branch to Kunnicoode branch of Trivandrum region. Thus the Appellate Authority has taken into consideration the mitigating circumstances. What more is to be considered by this court is not pointed out by the union. Moreover, it is not a punishment falling within S.11-A of Industrial Disputes Act in order to interfere with the punishment. Clause 19.6(d) of first Bipartite Settlement provides for stoppage of increments. Of course the

provision does not specify that it is with or without cumulative effect. But in the absence of any qualification to the punishment of stoppage of increment it is the discretion of the management to decide whether the stoppage of increment should be with or without cumulative effect. S.3(27) of General Clauses Act defines 'imprisonment'; "imprisonment shall mean imprisonment of either description as defined in the Indian Penal Code". Adopting the same meaning Clause 19.6(d) of the settlement could mean stoppage of increment with or without cumulative effect. Therefore the penalty imposed is not violative of any terms of Bipartite Settlement. The order to transfer the workman to Kunnicoode branch of Trivandrum region is said to be a punishment according to the union. But it is only an administrative order considering the exigencies in the bank. It is not a punishment and the court cannot interfere with it.

13. It was then contended by the learned counsel for the union that during the period of suspension he was given only subsistence allowance. Since the appellate authority has ordered reinstatement (with the penalty of stoppage of six increments with cumulative effect) he is entitled to get full wages for the suspension period. Clause 19.12(b) relevant portion reads: "and if some punishment other than dismissal is inflicted, the whole or a part of the period of suspension, may, at the discretion of the management, be treated as on duty with the right to a corresponding portion of the wages, allowances, etc". Therefore it is the discretion of the management to decide in what manner the period of suspension should be treated. Hence the court cannot interfere with the administrative decision of the management. Thus none of the contentions of the union is sustainable.

In the result an award is passed finding that the action of the management of Central Bank of India in imposing the punishment of withholding six annual increments with cumulative effect against Sri M. B. Muralidhara Menon is legal and justified and the order of transfer is not an order of punishment and there is no illegality in the order of transfer. The workman is not entitled for any relief.

The award will come into force one month after its publication in the official gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 6th day of August, 2008.

P. L. NORBERT, Presiding Officer

#### Appendix

Witness for the workman - Nil.

Witness for the Management

MW1 - 30-01-2002 - M. Sethu Madhavan

Exhibit for the workman

W1 - 09-07-2002

Leave record of Sri. K. P. Unnikrishnan.

Exhibit for the Management

M1 - 30-01-2002 - Enquiry File.

नई दिल्ली, 22 अक्टूबर, 2008

का.अ. 3060.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सैन्ट्रल बैंक ऑफ इंडिया के प्रबंधन के संबंध में निर्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-1, धनबाद के पंचाट (संदर्भ संख्या 94/1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-10-2008 को प्राप्त हुआ था।

[सं. एल-12012/18/1998-आई.आर.(बी- II)]

राजिन्दर कुमार, डेस्क अधिकारी

New Delhi, the 22nd October, 2008

S.O. 3060.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 94/1998) of Central Government Industrial Tribunal-Labour Court No 1, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of Central Bank of India and their workman, received by the Central Government on 22-10-2008.

[No. L-12012/18/1998-IR (B-II)]

RAJINDER KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of a reference u/s 10(1)(d)(2A) of Industrial Disputes Act, 1947.

Reference No. 94 of 1998

Employers in relation to the management of Central Bank of India

And

Their Workmen

Present: Shri H. M. Singh, Presiding Officer.

#### APPEARANCES:

For the Employers : Shri H. Nath, Advocate.

For the Workman : Shri C. Prasad, Advocate.

State : Bihar Industry : Bank

Dated, the 12th August, 2008

### AWARD

By Order No. 1-12012/18/98/IR(B-11) dated 8/9-10-1998 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal:

"Whether the action of the management of Central Bank of India, Gaya in dismissing Shri Raj Kishore Prasad, clerk from service w.e.f. 3-11-1992 is legal and justified? If not, what relief the said workman is entitled to?"

2. The workman has filed written statement stating that he has been performing his duties with unblemished record of service and he was appointed as sub-staff in the Bank in the year 1969 at patna Main Branch and continued as such till 22-9-79. Later on he was promoted as Clerk and posted at Nawada Branch and was transferred to Manpur Branch in the year 1980. He was promoted to the post of clerk in accordance with para 9.2 of the Bank's Promotion policy agreement being placed in First Division from Hindi Vidyapeeth. As he passed Praveshika Examination of Hindi Vidyapeeth, Deoghar in the first Division in the year 1979 and on the basis of the said certificate issued by Hindi Vidyapeeth, Deoghar, the concerned workman appeared in the 1. A. Examination from Magbadh University in the year 1990 and passed with second Division and he worked as Clerk in the Bank for 13 years with all satisfaction to his superiors. The management issued him a Memo No. GRO/DAW/88/346 dated 9-12-88 alleging therein amongst other as follows:

"It has now come to the Bank's notice that Sri Raj Kishore Prasad has made a false declaration regarding his passing parveshika Examination in the First division and the Certificate/Marksheet submitted by him to the bank are bogus"

The concerned workman submitted his explanation denying the charges levelled against him. The Disciplinary Authority of the management did not find explanation satisfactory and issued a chargesheet No. GRO/DA/89/112 Dated 13/24-5-89 and appointed an Enquiry Officer. The concerned wrkman denied the charges levelled against him in the chargesheet. The management constituted a fake enquiry and Enquiry Officer was appointed to conduct the enquiry proceeding against the concerned workman but could not afford full opportunity to the concerned workman. The Enquiry Officer conducted the enquiry and submitted false and perverse report prepared under the pressure of the management and rival Union. In the last

but one paragraph of the report, the Enquiry Officer has said that the misconduct charged/alleged in the chargesheet has been proved. It is reported, under the pressure of the management but in the last paragraph of his finding he concluded finding is clearly in favour of disproving the charge levelled against the concerned workman which clearly indicates by the avowment of the Enquiry Officer that the enquiry officer himself came to the conclusion that the examination under the name of Praveshika Examination 1977 of Hindi Vidyapeeth, Deoghar was conducted at Centre other than the one authoised by the Hindi Vidyapeeth, Deoghar and lastly he says, it appears that the CSE fell to the design of such centre, probably negligently, as against intentional malafide." The Disciplinary Authority should have passed his order of punishment taking into consideration of "against intentional malafide", but he ignored this important finding of the Enquiry Officer. The concerned workman appealed against his order of dismissal to the Appellate Authority but the Appellate Authority rejected his appeal and upheld the punishment awarded by the Disciplinary Authority. The management has inflicted punishment to the concerned workman disproportionately. The dismissal of the concerned workman is colourable exercise of the power of the management and it is outcome of union rivalry which the management favoured another union and crushed the concerned workman due to trade union activities. The management has adopted discriminatory attitude and this proves the malafide intention of the management towards the concerned workman to the effect that the same nature of offences committed by Sarbadanand Singh, Sub-staff, Fraser Road, Patna, U.P. Singh, clerk of Kalambey Road Branch, Muzaffarpur Region and Surajdeo Singh of Gaya Branch and Laxmi Say of Dumka Branch were settled by inflicting minor punishments whereas the case of the concerned workman was not considered by the management at their level or before the Conciliation Officer, Patna. It is gross violation of natural justice and enquiry. The action of the management is vindictive, coercive, arbitrary, motivated and colourable exercise of power and against the principles of natural justice. The dismissal of the concerned workman is illegal and invalid and is a case of victimisation. The management has adopted unfair labour practice and violated the provisions of Industrial Disputes Act, 1947. The management of the Bank is guided by bipartite settlement. The Union craves leave to add, amend or modify the written statement as and when necessary with the permission of this Hon'ble Tribunal and to file rejoinder to the written statement to be filed by the management.

It has been prayed that the action of the management of Central Bank of India, Gaya, in dismissing the concerned



workman, Raj Kishore Prasad, Clerk, from service w.e.f. 3-1-1992 is not legal and justified and the management of the Bank may kindly be directed to re-instate the concerned workman w.e.f. 3-1-1992 with full back wages.

3. Rejoinder has been filed by the workman stating therein that he was appointed in the year 1969 and he was not transferred to Gaya Branch in the year 1978, rather the Divisional office was shifted to Gaya from Patna, and the concerned workman was posted as Daftary and he had to shift alongwith other authorities of the Divisional Office. The written statement of the management has been admitted in para 4 save and except the date mentioned as 5-2-1978 which is correctly dated 3-2-78 in the marksheet. It has been denied that the concerned workman had submitted a false and fabricated Praveshika Certificate because the management is required to strict proof thereof because the concerned workman submitted his reply on 30-12-88 ascertaining the genuineness of the certificate. It is submitted that Sri D. Ram was not appointed as defence representative at all at any time during the fake enquiry and no full opportunity was given to the concerned workman to defend his case. The enquiry was held against all canons of natural justice. It has been mentioned that the management has adopted a discriminatory attitude by exonerating one employee from the same allegation and punishing other even to major punishment of dismissal. In this respect as award passed by the Presiding Officer, Industrial Tribunal, Patna in Reference No. 6 (c) of 1997 in which it is clearly mentioned that there has been Trade Union rivalry and there was unfortunate dispute in the name of backward and forward classes in the Bank. The said Award corroborate the reality of discriminatory attitude of the management in the name of forward caste, they are exonerated from the charges and others are punished. It is submitted that due to bias and vindictive attitude, the Appellate Authority dismissed the appeal of the concerned workman and the management adopted partition attitude by harassing the concerned workman.

The workman has prayed that the Hon'ble Tribunal may graciously be pleased to hold that the action of the management in dismissing the concerned workman is not justified and the concerned workman is entitled for re-instatement with full back wages.

4. The management has filed written statement stating that the concerned workman, Raj Kishore Prasad was appointed as sub-staff in the year 1969 and was posted at Patna Main Branch and later on he was transferred to Gaya Branch. He submitted an application dated 6-1-79 alongwith an attested copy of the marksheet dated 5-2-78 and Provisional Praveshika Certificate dated 3-2-78 asserting that he had passed Praveshika Examination of

Hindi Vidyapith, Deoghar, in the First Division held in the year 1977. He demanded his promotion from the post of sub-staff to the post of a clerk in pursuance of para 9.2 of the Banks Promotion Policy Agreement for award staff. On the basis of his aforesaid representation, the management promoted him as clerk by order dated 22-9-79 and he continued as such from that date. In the year 1988 the concerned workman played a fraud upon the management in submitting a false and fabricated Praveshika Certificate and obtained the promotion from the post of sub-staff to the post of a clerk taking advantage of the Bank Promotion Agreement. The matter was enquired and a memo dated 9-12-88 was issued to the concerned workman calling explanation from him with regard to the allegation that he produced false and fabricated documents to get advantage of promotion from the Bank. The concerned workman submitted his reply dated 30-12-88 ascertaining that the certificates submitted by him were genuine and he passed his praveshika certificate from the Deoghar Vidyapith in the year 1977. The explanation of the Concerned workman was not found satisfactory and the chargesheet dated 24-5-89 was issued to him framing the charges against him and putting him on departmental enquiry. Sri K.K. Sharma, Deputy Chief Officer, Gaya Branch, was appointed as Enquiry Officer by order dated 5-6-89 and appointed Shri P.K. Roy, Sub Accountant of the same branch as the management representative relating to the enquiry to be conducted against the workman on the charges levelled against him. Departmental enquiry was held by Sri K.K. Sharma after issuing necessary notices on number of dates. The first sitting was held on 14-9-90. The concerned workman appointed Sri B.R. Pandey and Sri D. Ram as defence representative on different dates. The departmental enquiry was held in presence of the chargesheeted workman and his defence representatives on all dates, and they were given full opportunity to cross-examine the management's witnesses, to give their own statements and to produce their defence witnesses. The departmental enquiry was held fairly and properly in accordance with the principles of natural justice. The Enquiry officer submitted his enquiry report dated 1-5-91 holding the concerned workman guilty of the charges levelled against him. The disciplinary authority issued the second show cause dated 29-8-92 enclosing therewith a copy of the enquiry report and the relevant papers, permitting him to submit his representation. The concerned workman submitted his representation and the disciplinary authority heard the case on 28-10-92 and gave full opportunity to the concerned workman to submit his representation and explanation relating to the findings of the Enquiry Officer. After being fully satisfied with the charges levelled against the concerned workman, by order dated 3-11-92 the

management dismissed him from service with immediate effect. The concerned workman filed an appeal dated 30-12-92 to the Appellate Authority which was dismissed having no merit in the grounds of his appeal. It has been submitted that the action of the management in dismissing the concerned workman from his service was legal, bonafide and justified and he is not entitled to any relief.

In rejoinder, it has been submitted that the workman concerned has not maintained unblemished record of service during his service career. It has also been alleged that the concerned workman has not passed practical Examination from Hindi Vidyapeeth, Dehli in the year 1979. He submitted documents purported to be mark sheet and examination certificate indicating there that he appeared in the examination in the year 1977 and passed the examination in first Division. The aforesaid documents submitted by the concerned workman were found to be false and fabricated and all the assertions of the concerned workman are baseless and imaginary. It has been denied that the management conducted fake enquiry. The Enquiry officer appointed by the management did not give full opportunity to the concerned workman to be defended. It is also denied that the Enquiry Officer gave his decision under the pressure of the management. It is wrong to suggest that the Enquiry Officer came to wrong conclusion relating to the charges levelled against the concerned workman. All these allegations are false, baseless and imaginary and the same are denied. The management has passed his order of punishment after examining mark sheet record and evidence of the present case. It is denied that the punishment imposed upon the concerned workman was disproportionate to the misconduct committed by him. It is incorrect that the management adopted differential attitude towards different workmen having committed offence of same nature of offence. The management imposed penalty according to gravity of the offence and the nature and circumstances existing in case of different persons. It is wrong to suggest that the management acted malafide in imposing different penalty to different workmen. It has been played that no award be passed that the concerned workman is not entitled to any relief.

5. The concerned workman has produced his copy of WW-1 and the workman have filed xerox copy of award of India dated 20-1-1999 along with copy of Award of Reference No.6 (1) of 1997. He has copy final order of the matter of disciplinary proceedings against U.P. Singh and also Bi-partite Settlement dated 6-5-1992.

6. The management has produced MW-1 (P) of J. Kumar Roy and he proved Ext M-1, M-2, M-3, M-4, M-5, M-6,

7. The representatives of the learned parties have been heard regarding facts of domestic inquiry. It has been found by this Tribunal on 18-7-2002 that the domestic enquiry was held to be fair and proper.

8. The learned counsel of the workman argued that the workman was awarded punishment dis-proportionately. It has been referred by the representative of the workman a decision of Hon'ble supreme court reported in 1983 supreme court cases (L&S) 26, in which Hon'ble Supreme Court laid down that punishment must be proportionate to the misconduct-facts and circumstances of the case must justify dismissal-dismissal for use of indiscreet, indecent or threatening language to superior only once in the course of long unblemished service. Held, disproportionately excessive. In the present case it is not the case of indecent or threatening language to superior, but this case is of fraud on the part of the concerned workman. In the case of bank of India and another vs. Animesh D. Mandvikar and others reported in 2005 Lab.LJ 416 the Hon'ble supreme court laid down Section 19-Industrial Disputes Act, Sch.2, Item 6- Termination of service/sans employee-Appointment obtained by producing false certificate obtained ten years after appointment-Mandvikar layed reference to caste scrutiny committee which found that for same is fraud does not invalidate reference and order of termination of service held proper. In this respect in the case of 2004 AIR SCW 419 and AIR 2004 SC 1106, the Hon'ble supreme court laid down that a person who has obtained the post by illegitimate means would continue to enjoy it not with standing the clear finding that he does not even have a shadow of right even to be considered for appointment. So, as per law laid down by Hon'ble Supreme Court, by producing false certificate the person has got no right to be in service.

9. Another argument advanced by the workman is that in the case of other person by producing false certificate a lenient view has been taken by the management. On wrong footing came a person Parity of another person who has done wrong or (how) wrong has not been considered by the management as because paper filed by the workman regarding award of Reference No.6 (1) of 1997 proving that there is Trade Unionism in the management. Rival union does not affect the case of any person and a person cannot take advantage of that, though the management regarding U.P. Singh case only six increments have been stopped permanently. The record of U.P. Singh is not here, so it cannot be said under what circumstances seeing the background the management has adopted lenient attitude by stopping six increments permanently.

10. The certificate which has been produced by the



Examination 1977 of Hindi Vidyapeeth, Deoghar. Ex.DE-10 in the enquiry paper shows that it was issued by the Indu Sinha, Kendra Vidyapeeth, Sunderpur, Gaya and by MW-2 in enquiry report, who is Senior Office Assistant of Hindi Vidyapeeth, Deoghar, working there since September, 1966. He has testified in respect of ME-7 which is letter originated from Hindi Vidyapeeth, Deoghar, the examination conducting body and addressed to Satarkata Adhikari, Central Bank of India, Patna, Zonal Office, which states that Raj Kishore Prasad was not even registered for Praveshika Examination, 1977 of Hindi Vidyapeeth, Deoghar. It also states that their passing of examination or obtaining certificate is out of question. It has also been stated by MW-2 that the examination Centre for Gaya, of the said examination was Dr. Ram Manohar Lohia College, Sunderpur, Pandri, Gaya, where the concerned workman did not appear. The concerned workman has cross-examined that Sanskrit High School, Sunderpur, Gaya, was the centre for the said examination. The name of Sanskrit High School does not figure in any of the documents to prove their contentions i.e. Sanskrit High School, Sunderpur, Gaya, has been projected as the centre of the said examination. The concerned workman has produced DW-5 to prove that Sanskrit High School, Sunderpur, Gaya was a centre for the said Praveshika Examination, 1977 of Hindi Vidyapeeth, Deoghar, where DW-5 is the office clerk of Sanskrit High School, Sunderpur working since 1976. The Enquiry Officer has found that the authorized centre to conduct the said examination for Gaya by the Hindi Vidyapeeth, Deoghar, was Dr. Ram Manohar Lohia College, Sunderpur, Pandri, Gaya and the concerned workman has not claimed to have appeared at that centre and the concerned workman has not presented any document from Hindi Vidyapeeth, Deoghar, authorising Sanskrit High School, Sunderpur, Gaya, to conduct Praveshika Examination, 1977. On the basis of said documents which did not originate shows that the concerned workman by producing false certificate got his promotion though he has submitted attested copy of marksheet and provisional Praveshika Certificate 1977 dated 3-2-78 for proving his passing the Praveshika Examination held by Hindi Vidyapeeth, Deoghar, in First Division. When he is not even enrolled for 1977 Examination how he could pass above examination by Hindi Vidyapeeth, Deoghar and there are two schools—one is Primary School and other is Sanskrit High School, Gaya. The original certificate has not been filed by the concerned workman, only attested copy has been filed only to get his promotion. As per enquiry report page 4, para 2 it has been found that the original certificate be with Raj Kishore Prasad, the concerned workman.

11. The concerned workman, Raj Kishore Prasad (MW-1) has stated in cross-examination at page 2 that at

the time of handing over the original certificate and marksheet issued by Hindi Vidyapeeth, Deoghar, I was not given any receipt by the management in that regard. The management is an institution. It is necessary, he has given original certificate and marksheet issued by Hindi Vidyapeeth, Deoghar for which no receipt has been issued because of the fact that the above witness has stated—“when I was not granted the receipt I had made the complaint before the higher authority. I had not made any written complaint, rather verbally I had made complaint before the Higher authority. The concerned workman is an office bearer of the union. It is not believable that he will make only oral complaint regarding his original certificate of Hindi Vidyapeeth, Deoghar, for giving to the management and the management has not issued any receipt. It only shows that only tries to fool the management on his part.

12. The management after enquiry has given the copy of enquiry report and sufficient opportunity to the concerned workman for his representation dt. 29-8-92 for proposed punishment and after submission of his representation Ext.M-1 dated 30-12-92 against order of imposing penalty. Final order has been passed by Appellate Authority by Ext.M-6 dated 26-6-93. In the enquiry the workman produced witnesses, of Harish Chandra Prasad, Satyajit Kumar Verma, K.D.P. Singh, Parmod Kumar Verma and Ashok Kr. Azad as D.W.1 to D.W.5 and the management adduced evidence of G.K. Jha and B.P. Singh as M.W.1 and M.W.2. ME-7 in the enquiry report which is letter issued by Kul Sachiv, Hindi Vidyapeeth, Deoghar, addressed to Satarkata Adhikari, Central Bank of India, Patna Zonal Office, containing therein that the person whose name is not enrolled the question of passing in the examination does not arise.

13. In the circumstances, in the present case fraud has been committed by the concerned workman by giving false certificate got promotion in the Bank. As per law laid down by Hon'ble Supreme Court reported in 2004 AIR SCW 419 and AIR 2004 SC 1469, by filing such certificate the workman is liable to be terminated. I find that in Bank's service which is custodian of public money, such a person should not be allowed to remain in the service of the bank.

14. As per discussion made above I render following award:-

The action of the management of Central Bank of India, Gaya, in dismissing Shri Raj Kishore Prasad, Clerk from service w.e.f. 3-11-1992 is legal and justified and the concerned workman is not entitled to any relief.

H.M. SINGH, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2008

## AWARD

**का. आ. 3061.** औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यी. सी. एम. सी. के प्रबंधन के संघर्ष नियोजकों और उनके कर्मचारियों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2, चण्डीगढ़ के पंचायत (संदर्भ सं. 217/2K5) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-10-2008 को प्राप्त हुआ था।

[सं. एल-23012/24/2002-आईआर(सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 22nd October, 2008

**S.O. 3061.** In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947), the Central Government hereby publishes the award (Ref. No. 217/2K5) of the Central Govt. Industrial Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure in the Industrial Dispute between the management of BBMB, and their workmen, received by the Central Government on 22-10-2008.

[No.L-23012/24/2002-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

## ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT-2,  
CHANDIGARH

Presiding Officer: Shri Kuldip Singh

Case No. ID 217/2K5

Registered on: 3-8-2005

Date of Decision: 5-9-2008

Shree Mohan S/o Sh. Bal Ram C/o Sh. R. K. Sangh  
Pannar, 211-J Brari, P.O. Pantap Nagar, Nangal Dam, Dist.  
Ropar, Ropar.

...Petitioner

Versus

The Chief Engineer, BBMB, Nangal Township, District  
Ropar, Ropar.

...Respondent

## APPEARANCES:

For the workman : Mr. R. R. Singh Pannar, AR

For the management : Mr. Bhagat Singh,  
Law Officer, AR

The following reference was received from Ministry of Labour, Government of India for the adjudication of this Tribunal; Vide Their order No. L-23012/24/2002-IR(CM-II) Dated 4-11-2003,

"Whether the action of the management of BBMB, Nangal Dam, Nangal in terminating the services of Sh. Suresh Mohan S/o Lal Ram w.e.f. 30-9-96 is legal and justified? If not to what relief the workman is entitled?"

The notice of the reference was given to the parties who appeared through their representatives and filed their pleadings such as statements of claim, written statement, affidavit witness of the management. The matter was fixed for the evidence of the workman when a talk about the settlement of the dispute in the Lok Adalat was initiated. The earlier efforts failed but today similar cases were fixed before CGIT-1, Chandigarh in which the parties settled the matter in the Lok Adalat. Prompted by that the representative of the workman submitted before this Tribunal that he is ready to settle the matter on the terms agreed to by the Management in similar cases today. Although the case was fixed for consideration on 15th of October, 2008, yet at the request of representatives of the parties the file was summarised from the records and taken up for consideration.

Both the representatives of the workman and Shri V.K. Sharma, Executive Engineer, BBMB, the concerned officer, have made joint statement that the Management shall consider the case of the workman within reasonable time in the light of the order No. 3624-43/R&R/466/99 Vol. III/R-5 dated 21st of March, 2001 and the policy of the BBMB. In view of this the workman withdraws his claim made in the reference.

Since the parties have compromised in the Lok Adalat, therefore, there remains no dispute between them which can be adjudicated upon by the this Tribunal. The reference is, therefore, answered in these terms and the award is passed.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2008

**का. आ.3062.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यी. सी. एम. सी. के प्रबंधन के संघर्ष नियोजकों और उनके कर्मचारियों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2, चण्डीगढ़ के पंचायत (संदर्भ सं. 282/2K5) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-10-2008 को प्राप्त हुआ था।

[सं. एल-23012/18/2002-आईआर(सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 22nd October, 2008

**S.O. 3062.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947), the Central Government hereby publishes the award (Ref. No. 282/2K5) of the Central Govt. Industrial Tribunal-cum-Labour Court, No. 2 Chandigarh as shown in the Annexure, in the Industrial Dispute between the management of BBMB, and their workmen, received by the Central Government on 22-10-2008.

[No. L-23012/18/2002-IR(CM-II)]  
AJAY KUMAR GAUR, Desk Officer

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, SCTOR 18 A, CHANDIGARH.

**Presiding Officer:** Shri Kuldip Singh

**Case No. ID 282/2K5**

**Registered on:** 15-10-2005

**Date of Decision:** 5-9-2008

Sh. Makhtiar Singh S/o Sh. Dalip Singh R/o Chowgath,  
P. O. Projan, Tehsil Una, Distt. Una C/o Sh. R. K. Singh  
Parmar, 211-L Brari, P.O. Partap Nagar, Nangal Dam,  
Distt. Ropar, Ropar.

...Petitioner

**Versus**

The Chief Engineer, BBMB, Nangal Township, District  
Ropar, Ropar.

...Respondent

#### APPEARANCE

**For the workman :** Mr. R. K. Singh Parmar, AR.

**For the management :** Mr. Bhagat Singh,  
Law Officer, AR

#### AWARD

The following reference was received from Ministry of Labour, Government of India for the adjudication of this Tribunal; Vide Their order No. L-23012/18/2002-IR(CM-II) Dated 4-11-2003.

"Whether the action of the management of BBMB, Nangal Dam, Nangal in terminating the services of Sh. Mukhtiar Singh S/o Sh. Dalip Singh w.e.f. 30-9-96 is legal and justified? If not to what relief the workman is entitled?"

The notice of the reference was given to the parties who appeared through their representatives and filed their pleadings such as statements of claim, written statement, affidavits of workman and that of witness of the

management. The matter was fixed for the evidence of the workman when a talk about the settlement of the dispute in the Lok Adalat was initiated. The earlier efforts failed but today similar cases were fixed before CGIT-I, Chandigarh in which the parties settled the matter in the Lok Adalat. Prompted by that the representative of the workman submitted before this Tribunal that he is ready to settle the matter on the terms agreed to by the Management in similar cases today. Although the case was fixed for consideration on 15th of Oct, 2008, yet at the request of representatives of the parties the file was summoned from the records and taken up for consideration.

Both the representatives of the workman and Shri V.K. Sharma, Executive Engineer, BBMB, the concerned officer, have made joint statement that the Management shall consider the case of the workman within reasonable time in the light of the Circular No. 3624-43/R&R/466/99/ Vol. III/R-5 dated 21st of March, 2001 and the policy of the BBMB. In view of this the workman withdraws his claim made in the reference.

Since the parties have compromised in the Lok Adalat, therefore, there remains no dispute between them which can be adjudicated upon by the this Tribunal. The reference is, therefore, answered in these terms and the award is passed.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2008

**का. आ. 3063.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी. बी. एम. बी. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2, चण्डीगढ़ के पंचाट (संदर्भ सं. 216/2K5) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-10-2008 को प्राप्त हुआ था।

[सं. एल-23012/26/2002-आई.अर.(सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 22nd October, 2008

**S.O. 3063.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947), the Central Government hereby publishes the award (Ref. No. 216/2K5) of the Central Govt. Industrial Tribunal-cum-Labour Court, No. 2, Chandigarh as shown in the Annexure, in the Industrial Dispute between the management of BBMB, and their workmen, received by the Central Government on 22-10-2008.

[No. L-23012/26/2002-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

## ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT-II, SCTOR 18A,  
CHANDIGARH.**

**Presiding Officer:** Shri Kuldip Singh

**Case No. ID 216/2K5**

**Registered on:** 8-9-2005

**Date of Decision:** 5-9-2008

**Pawan Kumar S/o Sh. Kishori Lal R/o Village Neilla, P. O. Dinda, Tehsil Nainadevi, District Bilaspur (H.P.)**

...Petitioner

Versus

**The Chief Engineer, BBMB, Nangal Township, District Ropar, Ropar.**

...Respondent

**APPEARANCE**

**For the workman :** Mr. R. K. Singh Parmar, AR.

**For the management :** Mr. Bhagat Singh,  
Law Officer, AR

**AWARD**

The following reference was received from Ministry of Labour, Government of India for the adjudication of this Tribunal; Vide their order No. L-23012/26/2003-IR(CM-II) Dated 4-11-2003.

"Whether the action of the management of BBMB, Nangal Dam, Nangal in terminating the services of Sh. Pawan Kumar S/o Sh. Kishori Lal w.e.f. 30-9-96 is legal and justified? If not to what relief the workman is entitled?"

The notice of the reference was given to the parties who appeared through their representatives and filed their pleadings such as statements of claim, written statement, affidavits of workman and witness of the management. The matter was fixed for the evidence of the workman when a talk about the settlement of the dispute in the Lok Adalat was initiated. The earlier efforts failed but today similar cases were fixed before CGIT-I, Chandigarh in which the parties settled the matter in the Lok Adalat. Prompted by that the representative of the workman submitted before this Tribunal that he is ready to settle the matter on the terms agreed to by the Management in similar cases today. Although the case was fixed for consideration on 15th of Oct, 2008, yet at the request of representatives of the parties the file was summoned from the records and taken up for consideration.

Both the representatives of the workman and Shri V.K.Sharma, Executive Engineer, BBMB, the concerned officer, have made joint statement that the Management

shall consider the case of the workman within reasonable time in the light of the Circular No 3624-43/R&R/466/99/Vol III/R-5 dated 21st of March, 2001 and the policy of the BBMB. In view of this the workman withdraws his claim made in the reference

Since the parties have compromised in the Lok Adalat, therefore, there remains no dispute between them which can be adjudicated upon by the this Tribunal. The reference is, therefore, answered in these terms and the award is passed.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2008

का. आ.3064.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबंधन के संबंध निर्यातकों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ सं. 66/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-10-2008 को प्राप्त हुआ था।

[सं. एल-22012/318/2003-आई.आर. (सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 22nd October, 2008

**S.O. 3064.** In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947), the Central Government hereby publishes the award (Ref. No. 66/2004) of the Central Govt. Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the Industrial Dispute between the management of Food Corporation of India, and their workman, received by the Central Government on 22-10-2008.

[No. L-22012/318/2003-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer.

**ANNEXURE**

**CENTRAL GOVERNMENT INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT, LUCKNOW**

**Present : N. K. Parohit, Presiding Officer**

**I. D. No. 66/2004**

Ref.No.L-22012/318/2003 IR(CM-II) dt. 30-6-2004

**BETWEEN**

The State Secretary,  
Bhartiya Khadya Nigam Karamchhari Sangh,  
5-6, Habibullah Estate, Hazratganj  
Lucknow - 226001

(In the matter of Sri P.D. Sawant)

AND

The Sr. Regional Manager,  
Food Corporation of India  
5-6 Habibullah Estate, Hazratganj  
Lucknow

**AWARD**

1. By order No. L-22012/318/2003-IR(CM-II) dated 30-6-2004, the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the State Secretary, Bhartiya Khadya Nigam Karamchhari Sangh, Lucknow and the Sr. Regional Manager, Food Corporation of India, Lucknow for adjudication.

क्या प्रबंधन, भारतीय खाद्य निगम, लखनऊ द्वारा कर्मकार श्री पी. डी. सावन्त, ए. जी. 1 (डो) का दण्डादेश संख्या सतर्कता 4(1211) आर ओ., लखनऊ 199 दिनांक 28-4-2003 के द्वारा दण्ड दिया जाना उचित तथा न्यायसंगत है। यदि नहीं तो सम्बंधित कर्मकार किस अनुतोष का हकदार है?

2. Background facts in nutshell are as follows: --

Sri P.D. Sawant, Asstt. Gr.1 (Depot) was charge-sheeted by the opposite party vide memo dated 1-1-2002 alleging following charges against him.

**ARTICLE-I**

That Sri P.D. Sawant, AG-1(D) did not maintain proper records about supervision of wagons, security arrangement enroute between Godown and Rail Head and records complaints received from destination and consignment claims.

**ARTICLE-II**

He did not attend the destinations for settlement of complaint and joint inspection/weightment of stocks under complaint.

**ARTICLE-III**

He being Depot Incharge found responsible abnormal transit loss, of 188.98.27 Qtls. Of wheat and rice in rakes dispatched Ex. Unnao during Feb. to May, 1996.

**ARTICLE-IV**

That he recorded a shortage of 702.11.000 Qtls. In an inward rake of wheat received Ex. Kotikalan Distt. Kolhapura but failed to lodge consignor claim to consignee.

**ARTICLE-V**

That he did not conduct test weightment of stocks through beam scale at Depot during despatches and receipt of stocks.

3. Sri R.N. Sharma was appointed as enquiry officer to enquire into the charges who submitted his enquiry report on 2-12-2002 in which out of five charges only one charge for maintaining the correspondence file in haphazard manner was found proved. The copy of the enquiry report was served upon the workman vide memo dated 7-2-2003(C4-10). Against the proved charge a detailed reply dated 21-3-2003 was submitted by the workman. After considering the reply the disciplinary authority imposed penalty of reduction of one stage in present time scale of pay for one year upon the workman vide order dated 28-4-2003. Against the said order Bharatiya Khadya Nigam Karamchhari Sangh (hereinafter referred to as BKNK Sangh) has raised this industrial dispute.

3-A. The BKNK Sangh has filed the statement of claim & rejoinder on 6-8-04 & 3-11-04 respectfully. In support of its claim the BKNK Sangh examined the workman Sri P.D. Sawant & filed following documents;

1. Chargesheet vide memo dated 1-1-02 (C-4/2)
2. Corrigendum dated 19-9-2002 (C-4/9)
3. Memo dated 2-1-03/7-1-03 (C-4/11)
4. Enquiry Report (C-4/11-25)
5. Representation of workman against enquiry report (C-4/26-28)
6. Order of Disciplinary Authority dated 28-4-03 (C-4/29-30)
7. Letter dated 27-2-98 regarding recovery of transit loss
8. Report of the committee dated 20-1-98

In rebuttal the opposite party has filed written statement on 8-10-04 & examined Sri Sukhbeer Singh Asstt. Grade I (Karnik)

4. It is alleged in the statement of claim that the charge-sheet served on the workman is illegal. The opposite party has neither considered his reply dated 21-2-2003 nor given any reason for disagreement with the reply as such impugned order is arbitrary and illegal. The opposite party has imposed the penalty on the charge which was not in the chargesheet. It is further alleged that findings of the enquiry officer regarding proved charge is without any evidence. The impugned order shows that the opposite party has disagreed with the findings of the enquiry officer while passing the impugned order for which no show cause notice has been served. Hence, impugned order be set aside.

5. The opposite party has contended in the written statement that the workman committed various irregularities at Food Storage Depot, Unnao during 1988-1996 as mentioned in the chargesheet but the Enquiry Officer has found only charge under Article I of the chargesheet as

proved against workman without considering all material evidence on record. The workman was given opportunity of hearing & was allowed to represent on the findings of the Enquiry Officer & on being found the said representation unsatisfactory, penalty was imposed. Since the Enquiry officer has found the charge under Article -I of the charge sheet as proved, there is no question of disagreement to the findings & violation of Reg. 59(2) of FCI Staff Regulation 1971. It is also contended that worker is having alternate remedy for filing appeal under Reg. 67 & 74 of the Reg. 1971 against the order of disciplinary authority. Thus present case is not maintainable.

6. The learned representative of the workman has argued that memo (4/10) reveals that the disciplinary authority was agreed with the findings of the enquiry as there was no note of disagreement with the findings of the Enquiry Officer whereas impugned order shows that the Disciplinary Authority has disagreed with the findings of the enquiry report but did not give any show cause nor disagreement with the findings of the enquiry report. The memo dated 7-2-2003 is not a valid show cause. The disciplinary authority also did not give any reason for disagreement with the findings of the Enquiry Officer thus the impugned order is violative of natural justice and is not legally sustainable as such is liable to be set aside. It is further contended that findings of the enquiry officer that workman maintained the correspondence file in haphazard manner, is based on no evidence. Moreover, the alleged corresponding file has not been produced and the said file was to be maintained by A. M. (D). It was not the duty of the workman to maintain the said file. It is also argued that submissions made by the workman in his representation have not been considered. The impugned order is outcome of non application of mind. Neither the Enquiry Officer nor the disciplinary authority has seen the so called correspondence file. It is also contended that alternate remedy of departmental appeal is no bar for raising industrial dispute. In support of his contentions learned representative of the workman has relied on 1984 SCC (L&S) 21 Jai Bhagwan vs. Ambala Central Co-operative Bank Ltd. and another, 1998 SCC (L&S) 1783 Punjab National Bank & others vs. Kunj Behari Misra and 1998 SCC (L&S) 1795 Director General, Indian Council of Medical Research and others vs. Dr. Anil Kumar Ghosh and another.

7. The learned representative of the management has argued that penalty has been imposed on the delinquent workman after following due procedure and a show cause notice was given to the workman after considering all the material on record and the reply filed by the workman. There is no illegality in the order. It is further argued that the employee was having remedy to file appeal against the impugned order but he failed to do so. It shows that he was satisfied with the impugned order.

7A. I have given my thoughtful consideration on the arguments advanced by the learned representatives of both the side and perused the relevant record.

8. So far as the contention of the learned representative of the opposite party that availability of the alternative remedy of the appeal against the impugned order bars the workman to raise industrial dispute is concerned, it seems to be devoid of any force in the light of principle laid down in 1984 SCC (L&S) 21 Jai Bhagwan vs. Ambala Central Co-operative Bank Ltd., wherein Hon'ble Apex Court has held that availability of the alternative remedy of departmental appeal is no bar in raising industrial dispute.

9. Now in the light of the contentions of both the sides it is to be considered whether impugned order is against the principle of natural justice & in spite of no evidence penalty has been imposed & whether penalty imposed is just & proper?

10. In this regard the concluding para of the Enquiry Report is very relevant which is as under:—

"Taking into consideration the entire facts & circumstances and the evidence discussed above the only thing found against Sri. P.D. Sawant is that he maintained the correspondence file in haphazard manner. The other charges against the C.O. Sri P.D. Sawant are not proved. Article I is found to be above extent only and not beyond that and the fault of Sri P.D. Sawant is of very minor nature."

11. It is evident from the aforesaid concluding para of the Enquiry Report that except charge under Article I of the chargesheet remaining charges were found not proved. It is also pertinent to mention that while sending the copy of the aforesaid Enquiry Report to the workman it is not stated in the memo that the Disciplinary Authority differs from the findings of the Enquiry Officer as regard remaining four charges under Article II to Article V of the charge sheet. In the said memo the Disciplinary Authority has only mentioned that a suitable decision will be taken after considering the report. The workman has given his representation against the findings of the Enquiry Officer regarding charge under Article I presuming that submissions were not to be made regarding those charges which were found not proved by the Enquiry Report. The witness of the opposite party Sri Sukhbeer Singh has also admitted in the cross-examination that only charge of maintaining correspondence file in haphazard manner was proved. The contents of the memo dated 1-1-2002 issued to the workman giving opportunity to represent against the findings of the Enquiry Report also reveal that the workman was required to submit his reply regarding proved charge only whereas in the impugned order, it is mentioned that:—

"Whereas the undersigned, being the Disciplinary Authority after careful examination of the charge

sheet, documents, Enquiry Report, representation of Sri P.D.Sawant, A.G.I(D), other related records/documents, has come to the conclusion that he could not submit proper justification against the charges levelled against him. Thus the charges framed against Sri P.D. Sawant, A.G.I(D) are established to the extent specified and Sri P.D. Sawant, A.G.I(D) has been found guilty of charges framed against."

12. It appears from the memo dated 1-1-02 & impugned order that though the disciplinary authority was having different view from the conclusion of the Enquiry Officer that except charge under Article I other charges levelled against the workman are not proved, did not afford opportunity to the delinquent workman to represent against the contrary finding in the impugned order.

13. In 1998 SCC (L&S) 1783 Punjab National Bank vs. Kunj Behari Misra the question under consideration was when the Enquiry Officer comes to a conclusion that all or some of charges alleging misconduct against an official are not proved then can the disciplinary authority differ from that and give a contrary finding without affording any opportunity to the Delinquent Officer while considering the said question. The Hon'ble Apex Court has observed that:

"Principles of natural justice will have therefore to be read into Regulation 7(2). Whenever the disciplinary authority disagrees with the enquiring authority on any article of charge then before it records its findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the Enquiry Officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the Enquiry Officer. The principles of natural justice require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

14. In the present case the Enquiry Officer has found only one charge under Article I of the charge sheet to be proved whereas by impugned order the disciplinary authority has imposed penalty considering all the charges levelled against the workman as proved. This legal position is not disputed that disciplinary authority can differ from the findings of the Enquiry Officer but in that case it is imperative to give show cause notice to the delinquent workman and reason for disagreement with his report. In impugned order the disciplinary authority has neither given any reason for disagreement of the report of the Enquiry Officer nor any show cause notice has been given to the

workman for considering charges under Articles II to IV which were found not proved in the Enquiry Report, as proved. Therefore, in the light of the aforesaid principle laid down by the Apex Court the impugned order is against the principle of natural justice.

15. Even if it is presumed that penalty was imposed on the basis of only proved charge under Article I of the charge sheet, the impugned order is not sustainable on the ground of no evidence. The witness of the opposite party Sri Sukhbeer Singh has admitted in his cross examination that the file alleged to be maintained in haphazard manner was neither produced before the Enquiry Officer nor before the disciplinary authority. Moreover, particulars of corresponding file are not mentioned in the charge under Article I of the charge sheet. It is evident from the perusal of the impugned order that disciplinary authority had not considered the submissions made by the delinquent workman in his representation against the enquiry report. It appears that the disciplinary authority has not applied his mind while passing the impugned order.

16. Therefore, in view of the aforesaid discussion the impugned order is not just and proper and the same is liable to be set aside.

17. Hence, the reference is adjudicated in favour of the workman Sri P.D. Sawant. The impugned order dated 28-4-2003 imposing penalty of reduction of one stage in present time scale of pay for one year upon the workman is set aside. The workman is entitled to get consequential benefits accordingly.

Award as above.

Lucknow,  
14-10-2008

N. K. PUROHIT, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2008

का. आ. 3065.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार को. बी. एम. बी. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2, चण्डीगढ़ के पंचाट (संदर्भ सं. 283/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-10-2008 को प्राप्त हुआ था।

[सं. एल-23012/16/2002-आई.आर.(सीएम-11)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 22nd October, 2008

S.O. 3065.—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947), the Central Government hereby publishes the Award (Ref. No. 283/2005) of the Central Govt. Industrial Tribunal-cum-Labour

Court, No. 2, Chandigarh as shown in the Annexure, in the Industrial Dispute between the management of BBMB, and their workman, received by the Central Government on 22-10-2008.

[No. L-23012/16/2002-IR(CM-II)]  
AJAY KUMAR GAUR, Desk Officer

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT-II, 18-A, CHANDIGARH

**Presiding Officer :** Shri Kuldeep Singh

**Case No. ID 283/2005**

**Registered on : 10-8-2005**

**Date of Decision: 5-9-2008**

Sh. Ram Asra S/o Sh. Ranjiwan C/o Sh. R. K. Singh Parmar,  
211-L, Brari, P.O. Partap Nagar, Nangal Dam, Distt. Ropar,  
Ropar. (now dead through LRs).

...Petitioner

Versus

The Chief Engineer, BBMB, Nangal Township, District  
Ropar, Ropar.

.. Respondent

#### APPEARANCES:

For the workman : Mr. R. R. Singh Parmar, AR

For the management : Mr. Bhagat Singh,  
Law Officer, AR

#### AWARD

The following reference was received from Ministry of Labour, Government of India for the adjudication of this Tribunal; vide their order No. L-23012/16/2002-IR(CM-II) dated : 4-11-2003:

"Whether the action of the management of BBMB, Nangal Dam, Nangal in terminating the services of Sh. Ram Asra S/o Sh. Ranjiwan w.e.f. 30-9-96 is legal and justified? If not, to what relief the workman is entitled?"

The notice of the reference was given to the parties who appeared through their representatives and filed their pleadings such as statements of claim, written statement, and affidavit of witness of the management. The matter was fixed for the evidence of the workman when a talk about the settlement of the dispute in the Lok Adalat was initiated. The earlier efforts failed but today similar cases were fixed before CGIT-I, Chandigarh in which the parties settled the matter in the Lok Adalat. Prompted by this the representative of the workman submitted before this Tribunal that he is ready to settle the matter on the terms agreed to by the Management in similar cases today. Although the case was fixed for consideration on 15th of October, 2008, yet at the request of representatives of the

parties the file was summoned from the records and taken up for consideration.

Both the representatives of the workman and Shri V. K. Sharma, Executive Engineer, BBMB, the concerned officer, have made joint statement that the Management shall consider the case of the workman within reasonable time in the light of the circular No. 3624-43/R&R/466/99/ Vol III/R-5 dated 21st of March, 2001 and the policy of the BBMB. In view of this the workman withdraws his claim made in the reference.

Since the parties have compromised in the Lok Adalat, therefore, there remains no dispute between them which can be adjudicated upon by this Tribunal. The reference is, therefore, answered in these terms and the award is passed.

KULDEEP SINGH, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2008

का. आ. 3066. औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी. बी. एम. बी. के प्रबंधन के सदस्य निवाजकों और उनके कार्यकारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2, चण्डीगढ़ के पंचाट (संदर्भ सं. 284/2K5) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-10-2008 को प्राप्त हुआ था।

[सं. एल-23012/21/2002-आईआर(सीएम-II)]

अजय कुमार गौर, डेस्क अधिकारी

New Delhi, the 22nd October, 2008

S.O. 3066.- In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 284-2K5) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the Industrial Dispute between the management of BBMB, and their workman, which was received by the Central Government on 22-10-2008.

[No. L-23012/21/2002-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, SECTOR 18-A, CHANDIGARH

**Presiding Officer:** Shri Kuldeep Singh

**Case No. ID 284/2K5**

**Registered on : 10-8-2005**

**Date of Decision: 5-9-2008**

Sh. Rakesh Kumar S/o Sh. Lachhman Singh C/o Sh. R. K. Singh Parmar, 211-L, Brari, P.O. Partap Nagar, Nangal Dam, Distt. Ropar, Ropar.

..Petitioner



## Versus

The Chief Engineer, BBMB, Nangal Township, District Ropar, Ropar.

...Respondent

## APPEARANCES:

For the workman : Mr. R. K. Singh Parmar, AR.

For the management : Mr. Bhagat Singh,  
Law Officer, AR

## AWARD

The following reference was received from Ministry of Labour, Government of India for the adjudication of this Tribunal vide their order No. L-23012/21/2002-IR(CM-II) dated: 4-11-2002:

“Whether the action of the management of BBMB, Nangal Dam, Nangal in terminating the services of Sh Shree Mohan S/o Sh. Lal Ram w.e.f. 30-9-96 is legal and justified? If not, to what relief the workman is entitled?”

The notice of the reference was given to the parties who appeared through their representatives and filed their pleadings such as statements of claim, written statement and affidavit of witness of the management. The matter was fixed for the evidence of the workman when a talk about the settlement of the dispute in the Lok Adalat was initiated. The earlier efforts failed but today similar cases were fixed before CGIT-I, Chandigarh in which the parties settled the matter in the Lok Adalat. Prompted by that the representative of the workman submitted before this Tribunal that he is ready to settle the matter on the terms agreed to by the Management in similar cases today. Although the case was fixed for consideration on 15th of October, 2008, yet at the request of representatives of the parties the file was summoned from the records and taken up for consideration.

Both the representatives of the workman and Shri V. K. Sharma, Executive Engineer, BBMB, the concerned officer, have made joint statement that the Management shall consider the case of the workman within reasonable time in the light of the circular No 3624-43/R&R/466/99/ Vol III/R-5 dated 21st of March, 2001 and the policy of the BBMB. In view of this the workman withdraws his claim made in the reference.

Since the parties have compromised in the Lok Adalat, therefore, there remains no dispute between them which can be adjudicated upon by the this Tribunal. The reference is, therefore, answered in these terms and the award is passed.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2008

कर. आ. 3067.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार

बी. बी. एम. बी. के प्रबंधन के संबंध निर्यातकों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2, चण्डीगढ़ के पंचाट (संदर्भ सं. 281/2K5) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-10-2008 को प्राप्त हुआ था।

[सं. एल-23012/20/2002-आईआर(सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 22nd October, 2008

S.O. 3067.—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947), the Central Government hereby publishes the award (Ref. No. 281/2K5) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the Industrial Dispute between the management of BBMB, and their workman, which was received by the Central Government on 22-10-2008.

[No. L-23012/20/2002-IR(CM-II)]

AJAY KUMAR GAUR, Desk Officer

## ANNEXURE

BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II,  
SECTOR 18-A, CHANDIGARH

Presiding Officer: Shri Kuldip Singh

Case No. ID 281/2K5

Registered on: 10-8-2005

Date of Decision: 5-9-2008

Sh. Rajinder Singh S/o Sh. Charan Dass R/o VPO Handola Tehsil and Distt. UNA (HP) C/o Sh. R. K. Singh Parmar, 211-L, Brari, P.O. Partap Nagar, Nangal Dam, Distt. Ropar, Ropar.

...Petitioner

Versus

The Chief Engineer, BBMB, Nangal Township, District Ropar, Ropar.

...Respondent

## APPEARANCES:

For the workman : Mr. R. K. Singh Parmar, AR.

For the management : Mr. Bhagat Singh,  
Law Officer, AR

## AWARD

The following reference was received from Ministry of Labour, Government of India for the adjudication of this Tribunal Vide Their order No. L-23012/20/2002-IR(CM-II) Dated: 4-11-2003:—

"Whether the action of the management at BBMB, Nagpur (Dist. Nagpur) in termination of the services of Shri Rajender Singh S/o Shri Ashok Singh, w.e.f. 30-9-96 is legal and justified? If not, what relief the workman is entitled to?"

The notice of the reference was given to the parties who appeared through their representatives and filed their pleadings such as statements of claim, written statement and affidavits of witness of the management. The date was fixed for the evidence of the workman which took about the settlement of the dispute in the Lok Adalat was initiated. The earlier efforts failed but today similar efforts were fixed before C-177-1, Chandigarh in which the case was settled the matter in the Lok Adalat. Prompted by that the representative of the workman submitted before this Tribunal that he is ready to settle the matter on the terms agreed to by the Management in similar case earlier. Although the case was fixed for consideration on 17-10-2008, yet at the request of representatives of both parties the file was withdrawn from the records and taken up for consideration.

Both the representatives of the workman, i.e. Shri V.K.Sharma, Executive Engineer, BBMB, the concerned officer, have made joint statement that the Management shall consider the case of the workman within reasonable time in the light of the Circular No 5624-15 X 82 dated 21-3-2001 III/R-5 dated 21st of March, 2001 and the policy of the BBMB. In view of this the workman withdrew the claim made in the reference.

Since the parties have compromised in the Lok Adalat, therefore, there remains no dispute between them which can be adjudicated upon by this Tribunal. The reference is, therefore, answered in these terms and the award is passed.

REKHI SINGH, President, Lok Adalat

दिनांक 22 अक्टूबर 2008

का. आ. 3068, -औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुबन्धन में कर्मचारी (ग्रुप डीबीजनल इंजीनियर, टेलीग्राफ के ग्रुप) के संबंध में दिनांक 30-9-96 के उनके कर्मचारों के बीच, अनुबन्धन में निम्नित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/अथ न्यायालय, अक्टूबर 30-9-96 (संदर्भ सं. सीजीआईएनजीके/43/03) का प्रकाशित आदेशों को केन्द्रीय सरकार का 22-10-2008 को प्राप्त हुआ था।

[सं. एन-40012/988-डी-11(13)]

अनज कुमार, डेस्क ऑफिसरी

New Delhi, the 22nd October, 2008

S.O. 3068.—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/NGP/43/03) of the Central Government Industrial Tribunal-

can-Labour Court, Nagpur, as shown in the Annexure, in the industrial Dispute between the employers in relation to the management of Divisional Engineer, Telegraph, and their workman, who was received by the Central Government on 22-10-2008.

[No. 1-40012/988-D-11(13)]

ANJAY KUMAR, Desk Officer

SIGNATURE

**BEEORE THESHA A. YADAV, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/43/03

Date: 17-10-2008

Petitioner/Party No.1: The Vice President,

All India Telegraph Engineering

Employees Union, Class-III,

C-1 Trunk Exchange, Amravati on

behalf of Shri Kashinath H. Raut

VERSUS

Respondent/Party No.2: The Divisional Engineer,

Telegraph, Akola (M.S.)

AWARD

Date: 17th October, 2008

1. The Central Government after satisfying the existence of dispute between the Vice President, All India Telegraph Engineering Employees Union, Class-III, C-1 Trunk Exchange, Amravati on behalf of Shri Kashinath H. Raut (Party No.1) and The Divisional Engineer, Telegraph, Akola (M.S.) (Party No.2) referred the same for adjudication to this Tribunal vide its letter No. 1-40012/988 (D-11) dated 19-05-1989 under clause (a) of sub-section (1) and sub-section (2A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947) with the following Schedule:

2. "Whether the action of the Divisional Engineer, Telegraph, Dist. Akola to avoid the regular service for Group D to Shri Kashinath Haribhau Raut Casual Labour is legal and justified? If not, what relief the Petitioner is entitled to?"

3. The reference came up for hearing on 6-10-2008. On perusal of Kojanumast was that the reference is received initially to the CGIT, Amravati in the year 1989. After the transfer to this Tribunal, the notices were issued to both the parties as per the Reference dt. 23-6-2005. The management representative is attending the Court. However, on behalf of the Petitioner, nobody appeared right from 23.6.2005 till today. It may also be the representative of the management is present, the workman Petitioner is absent. No reason for adjourning the reference for the presence of Petitioner only. It appears that he is not interested and hence it is dismissed for the default. Hence this negative award.

Date: 17-10-2008

A.N.YADAV, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2008

Versus

Central Soil Salinity Research Institute, Karnal-132001

....Respondent

**APPEARANCES:**

For the workman : Sh. Manjit Dhiman with Sh. R.P. Rana

For the management : Sh. Anil Sharma with Shri R. K. Sharma

**AWARD**

Passed on 3-10-2008

Central Government referred the nine industrial disputes of different workmen for judicial adjudication having similar issues to adjudicate. I have gone through all the references and the pleadings of parties. It is clear that the questions of fact and law are similar to adjudicate and accordingly, all the references are answered in one award with the condition that whenever there will be difference of point of facts, those facts will be dealt with separately in this reference. The nine references which have been referred by the Central Government are as follows :—

1. I.D. No. 87 of 1994, Sh. Megh Raj vs. Central Soil Salinity Research Institute, L-42012/38/93-IR(DU), dated 12-8-94.
2. I.D. No. 85 of 1994, Sh. Resham Singh vs. Central Soil Salinity Research Institute, L-42012/9/93-IR(DU), dated 12-8-94.
3. I.D. No. 105 of 1994, Sh. Ram Narain vs. Central Soil Salinity Research Institute, L-42012/94/93-IR(DU), dated 24-8-94.
4. I.D. No. 107 of 1994, Sh. Rajendra vs. Central Soil Salinity Research Institute, L-42012/95/93-IR(DU), dated 24-8-94.
5. I.D. No. 111 of 1994, Sh. Raj Kumar vs. Central Soil Salinity Research Institute, L-42012/92/93-IR(DU), dated 24-8-94.
6. I.D. No. 125 of 1994, Sh. Chander Pal vs. Central Soil Salinity Research Institute, L-42012/115/93-IR(DU), dated 29-9-94.
7. I.D. No. 147 of 1994, Sh. Jasmer Singh vs. Central Soil Salinity Research Institute, L-42012/87/93-IR(DU), dated 31-10-94.
8. I.D. No. 149 of 1994, Sh. Ram Avtar vs. Central Soil Salinity Research Institute, L-42012/113/93-IR(DU), dated 4-11-94.
9. I.D. No. 151 of 1994, Sh. Udaibir vs. Central Soil Salinity Research Institute, L-42012/84/93-IR(DU), dated 4-11-94.

का.आ. 3069.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचि में, केन्द्रीय सरकार सन्दूक सोईल सेलिनिटी रिसर्च इंस्टिट्यूट के प्रबंधकों के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुसूचि में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/अथवा न्यायालय नं. 1, चण्डीगढ़ के पंचाट (संदर्भ सं. 87, 85, 105, 107, 111, 125, 147, 149, 151/94) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-10-2008 को प्राप्त हुआ था।

[सं एल-42012/38, 39, 94, 95, 92/93-आई.आर.(डी.यू.)]

सं. एल-42012/115, 87, 113, 84/93-आई.आर.(डी.यू.)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 22nd October, 2008

S.O. 3069.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. Nos. 87, 85, 105, 107, 111, 125, 147, 149, 151/94) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Chandigarh, as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Central Soil Salinity Research Institute and their workman, which was received by the Central Government on 22-10-2008.

[No. L-42012/38, 39, 94, 95, 92/93-IR(DU)]

No. L-42012/115, 87, 113, 84/93-IR(DU)]

AJAY KUMAR, Desk Officer

**ANNEXURE**

**BEFORE SHRI GYANENDRA KUMAR SHARMA,  
PRESIDING OFFICER, CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1,  
CHANDIGARH**

Case Nos. I.D. 87 of 1994, 85 of 1994, 105 of 1994, 107 of 1994, 111 of 1994, 125 of 1994, 147 of 1994, 149 of 1994, 151 of 1994

I.D. No. 87 of 1994, Sh. Megh Raj

I.D. No. 85 of 1994, Sh. Resham Singh

I.D. No. 105 of 1994, Sh. Ram Narain

I.D. No. 107 of 1994, Sh. Rajendra

I.D. No. 111 of 1994, Sh. Raj Kumar

I.D. No. 125 of 1994, Sh. Chander Pal

I.D. No. 147 of 1994, Sh. Jasmer Singh

I.D. No. 149 of 1994, Sh. Ram Avtar

I.D. No. 151 of 1994, Sh. Udaibir

....Applicants

I.D. No. 87/84, Sh. Megh Raj shall be the leading file, whereas copies of award shall be placed in each reference separately.

The industrial dispute which was referred in which it is clear from all the 8 cases except reference No. 149 of 1994 Sh. Ram Avatar vs. Central Soil Salinity Research Institute are as follows :—

“Whether the action of the management of Central Soil Salinity Research Institute, Karnal in terminating the services of the workmen, casual workers w.e.f. 1-4-88 is legal and justified? If not, to what relief the workmen concerned are entitled?”

In I.D. No. 149/94, Sh. Ram Avatar vs. Central Soil Salinity Research Institute, the reference referred to this Tribunal is as follows :—

“Whether the action of the management of Central Soil Salinity Research Institute, Karnal in terminating the services of Sh. Ram Avatar Ex-daily paid labourer w.e.f. 31-12-87 is just, fair and legal? If not, what relief he is entitled and from what date?”

On perusal of the pleadings of parties, it is evident that all the workmen have alleged that they joined services in the office of management on different dates in different areas as daily waged workers and continuously worked until 31st of December, 1990. From 1-1-91 the workmen were refused employment without any reason, notice or retrenchment compensation. All of them have completed 240 days of working in the preceding year before the date of their termination by the management of respondent. The workmen have also challenged their working through contractor from 1-4-88 to December, 1990. It is the case of the workmen that upto December, 1990 they directly worked with the department and there was no contractor in between them and department. The contract, if any claimed by the management of respondent is illegal and sham.

On the basis of the above facts, all the workmen have requested for the suitable order for their reinstatement into the services with full back wages along with continuity in service.

The management appeared and raised certain objections on the maintainability of the reference. In the written statement filed by the management, it is stated that the respondent is not an industry as defined under Industrial Disputes Act, and accordingly, this Tribunal has no jurisdiction for answering these references. It has also been alleged by the management of respondent that all these workmen were employed on daily wages on different dates but they have not worked with the management after 1-4-88, i.e. the date from which the work has been ordered to be taken through different contractors on contractual basis. None of the workmen has completed 240 days of working in the preceding year from 1-4-88.

The parties were afforded the opportunity for adducing evidence. All the workmen filed their affidavits in their respective references and were subjected to cross-examination by learned counsel for the management of respondents. Likewise, R.C. Meena, Senior Administrative Officer filed his affidavit in all the references on behalf of the management of respondent and he was subjected to cross-examination by learned counsel for the workmen in every reference. Following documents were also relied upon by the parties :

Annexure R-1 is the letter dated 26-12-90 of Government of India, Ministry of Labour permitting the Director Central Soil Salinity Research Institute to engage not more than 200 contract labourers through contractors for the work mentioned in the letter. The certificate of registration for engaging contract labour is also enclosed. Annexure R-2 is the office order regarding destruction of the old acquittance rolls and muster rolls for the period of 1-1-80 to 31-12-86. This office order also contains a list of old acquittance rolls and muster rolls which were destroyed through this order. Rules relating to the destruction of office records connected with accounts are filed on record as Annexure R-3. Annexure R-5 is the letter written by Senior Administrative Officer of Central Soil Salinity Research Institute, Karnal addressed to Sh. Ramesh Kumar regarding the acceptance of his quotation for providing labour for certain work, i.e. W-1 is the statement of working days of all the workmen provided by the management of respondent. Certain documents were provided by the management at the latter stage, at the time of hearing arguments which were marked on admission as M1/2 to M1/8. M1/8 is the statement of working days filed by the management regarding every workman. M1/2 to M1/7 are the copies of vouchers-payment bills for different periods.

I have heard learned counsels for the parties. Learned counsels for the workmen have argued that all the workmen have worked with the department directly upto December, 1990. The management was permitted by the Central Government to carry out their works through contractor on 26th December, 1990 and a certificate regarding this was issued to him on 24-12-90. There was no occasion for the department to get the work done through contractors before 26-12-1990. It has also been argued that contention of the management regarding getting the work done through contractor is not acceptable because the contract, if any, is sham, illegal and against the provisions of law.

Learned counsels for the management of respondent have argued as follows :

1. That the respondent is not an industry. Hon'ble the Apex Court in Physical Research Laboratory vs. K.G. Sharma, 1997 (3) RSJ 2150 held the Physical Research Laboratory not to be an industry. The functions and work carried on by the Central Soil Salinity Research Institute is

similar and almost same as of the Physical Research Laboratory and accordingly, the respondent is not an industry and this Tribunal has no jurisdiction to decide the reference.

- From 1-4-88, all the workmen worked through contractors and the vouchers relating to the payment of wages through contractors have been enclosed as M1/2 to M1/7. This shows that there was no direct relationship between the workman and the management of respondent from 1-4-88 onwards. It has also been argued by learned counsel that sometimes, one workman used to work as contractor along with his working as a labour and he was responsible for his payment and for the payment of other workmen.

No doubt this argument was slightly modified by learned counsel after some time by stating that he made this argument without any material on record.

- That no workman has completed 240 days in the proceeding year to the date of his termination, hence, not entitled for any relief.

After hearing the arguments and perusing the materials on record, I am of the view that following are the main issues for adjudication before this Tribunal in all these references.

- Whether the respondent is an industry? And whether this Tribunal has jurisdiction to dispose of these references?
- Whether the workmen worked with the management directly up to December, 1990 or up to 1-4-88?
- Whether the contract as claimed by the workmen from 1-4-88 till December, 1990 is sham, illegal and against the provision of law?
- Whether the workmen are entitled to the relief prayed for?

I am taking issue No. 1 for adjudication that whether the respondent is an industry? The term industry has been defined in Section 2(J) of the Industrial Disputes Act, 1947 to mean any business, trade, undertaking, and manufacture of calling of employers and includes any calling, services, employment, handicraft or industrial occupation or avocation of workmen.

In Bangalore Water Supply and Sewerage Board Vs. Rajappa and others AIR 1978, Supreme Court 548, 7 Judges Bench of Hon'ble the Supreme Court has defined the term industry and extended its implication in various departments. As per the above mentioned verdict of Hon'ble the Apex Court, the term industry which has been defined in sub-section 2(J) of the Industrial Disputes Act has a wide import as :—

- Whether there is (i) systematic activity; (ii) organized by cooperation between employer and employee (the direct and substantial element is chimerical) and (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material needs or services geared celestial bliss), prima facie here is an industry for the enterprise.
- Absence of profit motive or gainful objective is irrelevant, be the founder in public, joint, private or other sector.
- The true focus is functional and the test is the nature of the activity with special emphasis on the employer-employee relations.
- If the organization is a trade of business it does not cease to be one because of philanthropy animating the undertaking.

It is specially the tripartite test as referred by Hon'ble the Apex Court in Bangalore Water Supply case (supra) which are necessary to qualify any institution to be an industry. It depends basically on the facts and circumstances of the case and can be decided after evaluating the functioning of any organisation. In Bangalore Water Supply Case (supra) Hon'ble the Apex Court has also held that all the research institutions cannot seek exemption to be an industry. There are certain research institutions which carried the research for Government of India on issues which can be termed as sovereign functions can only claim exemption. It is also made clear by Hon'ble the Apex Court in Water Supply Case (supra) that within the institutions which are carrying and exercising sovereign functions if there are units which are industries and they are substantially severagal from other units, there units may qualify for the term industry.

Learned counsel for the management has relied upon the contention in Physical Research Laboratory case (supra) that the functioning of Physical Research Laboratory is the same as that of the respondent. I have gone through the evidence of Sh. R.C. Meena, Senior Administrative Officer in which he has stated that management has big farm of 90 acres. There are 2 tractors. Office timings are from 9.30 am to 5.00 pm with one hour lunch. It is admitted by Sh. R.C. Meena that the management used to auction trees of Safedaas, Ber, Guava and fish farms with production. It is also admitted by MWI, Sh. R.C. Meena that the management is selling the production of the farm without making any profit. Thus, the functions which the Central Soil Salinity Research Institute is carrying on along with the research work cannot be strictly said to be the sovereign functions. The functions mentioned above are the welfare activities and economic adventures and these functions put the management within

the definition of industries as the functions referred to above are substantially servicial. Thus, I am unable to accept the contention of learned counsel for the management that function of the respondent is same as the Physical Research Laboratory. As per the function and the work carried on by the management of respondent, I am of the view that in light of the law laid down by Hon'ble the Apex Court in Bangalore Water Supply Case (supra) the respondent is an industry as defined in Section 2(j) of the Industrial Disputes Act, and the dispute between the workmen and the management of respondent is an industrial dispute and this Tribunal has jurisdiction to dispose of these references.

The next important question for adjudication before this Tribunal is whether the workmen worked directly with the management of respondent up to December, 1990 or up to 1-4-88. It is the contention of the management of respondent that from 1-4-88, all the workmen worked through the contractor and they were not employees of the management of respondent. On the other hand, the workmen have stated that they worked directly with the management of respondent up to December, 1990 and the contract, if any alleged to be made by the management of respondent is sham, void and illegal. In support of its contention, the management has filed certain documents regarding engaging of contract labour for carrying out its work. Annexure R-1 is the copy of the letter written by Government of India, Ministry of Labour to the Director of Central Soil Salinity Research Institute permitting him to engage contract labour less than 200 in number for carrying out their work. A certificate in this regard was also issued by the prescribed authority concerned. The registration permitting the management of respondent for carrying out their work through contract labour was signed and given to the respondent on 26-12-90. Likewise, Annexure R-2 also bears the date which is clearly seen as 26-12-90. It means that the department was permitted to carry out the work through contractors from 26-12-90 onwards not before that.

The question before this Tribunal is what will be the effect of the work done by the workmen through contractor before the permission for such working from the appropriate department under the Contract Labour (Regulation and Abolition) Act, 1970. Hon'ble the High Court of Punjab and Haryana in Food Corporation of India and others vs. Presiding Officer Central Government Industrial Tribunal-cum-Labour Court-I, Chandigarh and others, 2003(1) R 391 has held that the claim of Contract Labour (Regulation and Abolition) Act, 1970 reveals that it regulates the employment of contract labour in certain establishments and provides for its abolition in certain circumstances. Hence, it does not provide for total abolition of contract labour. It has also been held by Hon'ble the High Court in the above mentioned judgment that if a principle employer does employ the persons through the contractor who is having no licence under Section 12 of the Contract Labour

(Regulation and Abolition) Act, then only panel provisions of Sections 23 and 24 of the said Act attracted, hence, it is nowhere provided that such employers employed through the contractor would be deemed employees of the principle employer. Even when the management corporation did not seek registration under Section 7 of the Contract Labour (Regulation and Abolition) Act, on the date when the workmen were engaged, work of each of the contractor will not be deemed to be the direct employees of the management corporation.

Hon'ble the High Court in the above mentioned judgment has further said that when it is found that engaging of contract labour was not bona fide and it was a mere camouflage, then in those cases, the contract labour by the principle employer has to be treated as employees of the principle employer who can be directed to regularize the services of the contract labour in the concerned establishment but if the workmen did not so plead, they will not be entitled to seek relief. Hon'ble the Supreme Court in G.M., ONGC Ltd. and others Vs. ONGC Contracted Worker Union, 2003(1) R 841, while relying the law laid down by Hon'ble the Apex Court in Steel Authority of India Limited and others vs. National Union Water Front Workers and others (2001) 2 SCL 1 held as under:

- (i) Where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudication court ordered abolition of contract labour or because the appropriate Government issued notification under Section 10(1) of the CLRA Act, no automatic absorption of the contract labour working in the establishment was ordered;
- (ii) Where the contract was found to be sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held in fact and in reality, the employees of the principal employer himself. Indeed, such cases do not relate to abolition of contract labour but present instances wherein the Court pierces the veil and declared the correct position as a fact of the stage after employment of contract labour stood prohibited;
- (iii) Where in discharge of a statutory obligation of maintaining a canteen in an establishment the principle employer availed the services of a contractor the courts have held that the contract labour would indeed be the employees of the principle employer.

After careful reading of all the above mentioned judgments in which law relating to the contractual labour has been propounded by Hon'ble Punjab and Haryana High Court and Hon'ble the Apex Court, I am of the view that the

management was entitled for getting the work done through the contract labour supplied by a valid contractor. If there was violation of any Section of Contract Labour (Regulation and Abolition) Act, 1970, the authorities of the management of respondent could have been liable for the penal actions but on account of violation of any section of the said Act, it cannot be said that the workmen became the direct employees of the management of respondent. Only in one case, there may be a direct employer-employee relationship if there is a camouflage on the contract and the contract is sham and illegal. In the present case, it is alleged by the workmen that the contract, if any made by the management of respondent is void, and illegal. This contention of the workmen provides and opportunity to this Tribunal to go deep into the matter about the nature of contract. At the time of arguments, management was asked to file certain documents regarding the execution of the contract. The management filed the documents which are on record as M1/2 M1/7. These are vouchers for the payment of the work said to be done through the contractors. One of the contentions of learned counsel for the management of respondent was that sometimes, the contract was even given to one of the workman and he was working as a contractor as well as a worker. Later on, when the files were reserved for award, learned counsel, once appeared before this Tribunal and stated to withdraw this argument on the ground that there is no such material on record. I am unable to accept this contention of the learned counsel that there is no material on record to justify the arguments of learned counsel that sometimes, one of the workmen used to work as contractor as well. These vouchers filed by the management bears the signatures of Raj Kumar, Rakesh, Inder Singh, Rajender Pal and Ashok Kumar who are the workmen in this case and it is not the contention of the management that rest of the contractors named above have never worked with the management of respondent as workers and labourers. Thus, there is substantive material before the Tribunal to justify that sometimes, one of the workmen used to work as a contractor in addition to work as labour.

Apart from these documents, no other document in spite of affording opportunity was placed before this Tribunal. Hon'ble the Apex Court in *Sita Ram and another Vs. Moti Lal Nehru Farmers' Training Institute* 2008 (117)FLR 1191 has held that when the documents are lying in the custody of the management and the management is not providing and filing the copies of the document before the Tribunal, adverse inference should be drawn against the management. All the documents relating to the working of workmen through contractor are lying in the custody of the management and the management has just filed few copies at its choice. Management has concealed the rest of the documents and has not filed even after the direction of this Tribunal. Accordingly, as per the laid down by the Hon'ble Apex Court in *Sita Ram's Case* (supra) this Tribunal

will have to take the adverse inference for deliberately not filing the relevant documents before this Tribunal. The documents which have been filed clearly shows that one of the workmen out of a group was engaged as contractor and he used to received the amount of vouchers for the work done. The Court has no hesitation to say that this is not the intention of legislation to permit such type of contract labour and it cannot be said that the work was done through contractor. It is a camouflage and the so called contract is sham. Hon'ble the Apex Court in *G.M., ONGC Case* (supra) has held that following conditions should fulfilled while holding a contract to be camouflage or sham:

1. That there existed a relationship of master and servant.
2. That there was no contractor appointed by the management of respondent.
3. That the workmen were under the disciplinary action of the management.
4. The wages were paid directly to the workmen by the management and the acquittance roll was prepared by the management to make payment to the workmen.

If the above criterions as laid down by the Apex Court in *G.M., ONGC case* (supra), are applied in the instant case, it is clear that no contractor was appointed by the management of respondent. The work was done by the workmen and one of the workmen in a group was shown as a contractor and payment was accordingly made by the department to all the workmen showing on the paper through workmen contractor. In my opinion, there can be no better case to declare the contract as camouflage and sham than this and accordingly, there is a direct relationship of employer and employee between the management of respondent and it is hereby held that at all the workmen worked directly under the management of respondent and there was a relationship of employer and employee up to December, 1990. In such a case there was no occasion to any person other than the management to have administrative control over the workmen.

Now the question left for adjudication before this Tribunal is whether all the workmen have completed 240 days in the proceeding year from the date of their termination. The termination period now will be counted not as 1-4-88 but December, 1990 while calculating the working days. All the workmen have stated that they have worked up to December, 1990 and there working days are more than 240 days. In all the cases, the workmen have filed a list of working days which was, no doubt, contradicted by the management by filing its own statement of working days. The management filed the list of working days twice to show that the work done by the workmen was less than 240 days in the preceding year. Management has filed the statement up to 1-1-88 only. The management



was asked to produce the copies of vouchers and any other document regarding the payment to the workmen. The management did not file a single document except M-2 to M-7 whereas, documents were lying with the management. It is one of the contentions of learned counsel for the management of respondent that documents were destroyed. He has filed the orders of preservation/possession regarding destruction of documents as Annexure M-2. A careful reading of Annexure M-2 shows that all the documents regarding acquittance rolls and muster rolls for the period from 1-1-80 to 31-12-86 were destroyed. But no documents from 1-1-87 till December, 1990 were produced to this Tribunal, whereas, from the documents filed by the management M-2, it is established before this Tribunal that those documents neither have been destroyed nor lost. Accordingly, those all the documents pertaining to the payment of work done by the workmen from 1-1-87 till December, 1990 are lying still in the custody of the management and the management for the reasons mentioned in the body of this judgment to escape from any lawful liability, did not produce the same before this Tribunal. Accordingly, adverse inference as per the law laid down by Hon'ble the Supreme Court in *Sita Ram* case (supra) shall be drawn by this Tribunal.

Now the questions arise what should be the basis for drawing the adverse inference? Whether the working days written by the workmen and proved as oral evidence should be accepted as such? For adverse inference, a reasonable criterion has to be adopted by this Tribunal at which the working days calculated by the workmen along with the evidence of the management are to be considered. Now in his evidence has admitted that the workmen have completed 240 days before the date of his termination. All the accounts of the department seems to prevent the workmen to claim a lawful benefit under the law for the time being in force. Thus, under such circumstances, where the workman is stating that he has worked more than 240 days in the calendar year preceding to the date of his termination and the witness of the management of respondent is admitting it and the management of respondent in spite of having all the relevant documents regarding the payment has failed to file the documents before this Tribunal, this Tribunal has no option otherwise than to accept the contention of the workmen that they all have completed 240 days of work in the preceding year from the date of their termination. As stated earlier that days will be counted in direct relationship with the management up to December, 1990. Thus, on the basis of the above observation, I am of the view that all the workmen have completed 240 days in the preceding year from the date of their termination.

Admittedly, no notice or retrenchment compensation was given to them before their termination. Learned counsel for the management has also contended that the initial appointment of the workmen was not legal but there is no material on record to accept this contention of the learned

counsel because all the workmen were legally appointed as per the policy of the Government and there was no violation of any law in their appointments.

The case being that all the workmen are entitled for the relief as prayed, in such types of cases the right to work should primarily be considered by the Tribunal and in appropriate cases, the Tribunal must think for a reasonable compensation. In all these cases, I am of the view that all the workmen have the right to work. As for the long time, they have not worked in the department they will not be having any right to back wages. Accordingly, the reference of all the workmen is answered in negative that the action of the management of Central Soil Salinity Research Institute, Karnal in terminating the services of all the workmen are not legal and justified. All the workmen on the basis of the agreements made in the body of this award are entitled for reinstatement into the services on the same terms and conditions they were working with the management at the time of their termination from services. However, they will not be entitled for any back wages. The management is directed to reinstate all the workmen into the services as stated earlier within one month from the date of publication of this award. All the references are accordingly answered. A certified copy of this award be placed in the files of ID No. 65 of 1994, ID No. 105 of 1994, ID No. 107 of 1994, ID No. 111 of 1994, ID No. 125 of 1994, ID No. 147 of 1994, ID No. 149 of 1994, ID No. 151 of 1994. Central Government be informed. File be consigned.

(Sd/-) A. K. SHARMA, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2008

**क्र.आ. 3070.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वये में, कन्द्रीय सरकार, पी.वी.एम.के. के प्रबंधन के संघर्ष विवादों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में कन्द्रीय सरकार, औद्योगिक अधिकरण/थ्रम न्यायालय (स. 1, चण्डीगढ़) के संघर्ष संहिता 65/94) को प्रकाशित करता है, जो कन्द्रीय सरकार को 22-10-2008 को प्राप्त हुआ था।

[स. 1, 420112/94-आई.आर. (डी.यू.)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 22nd October, 2008

**S.O. 3070.** In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 65/94) of the Central Government Industrial Tribunal-cum-I about Court No. 1, Chandigarh, as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of B.B.M. (S) and their workman, which was received by the Central Government on 22-10-2008.

[No. L-420112/94-IR (DUG)]

AJAY KUMAR, Desk Officer



**ANNEXURE**

**BEFORE SHRI GYANENDRA KUMAR SHARMA,  
PRESIDING OFFICER, CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, 1  
CHANDIGARH**

Case No.LD.65/94

1. Gen. Secretary, BBMB Karamchari Sangh, Sundernagar, Distt. (H.P.).
2. Gen. Secretary, BSL/ BBMB, Transport Works Union, Sundernagar Township Distt. Mandi. (H.P.).
3. President, BBMB Workers Union, SL-3/11, Siapper, Distt. Mandi.
4. Gen. Secretary, ESL Project Mazdoor Ekta Union, S-2/733.
5. Sundernagar Township Distt. Mandi. (H.P.).

...Applicants

Versus

1. The Chairman, BBMB, Sector 19/Bm Madhya Marg, Chandigarh.
2. The Financial Advisor, BBMB, Sector 19/B Madhya Marg, Chandigarh.
3. Addl. Secretary, BBMB, Sector 19-B Madhya Marg, Chandigarh.
4. Chief Engineer, BBMB/BSL Complex, Sundernagar Township Distt. Mandi. (H.P.).

...Respondents

**APPEARANCES**

- For the Workman : Sh. Ram Kishan.  
For the management: Sh. R.S. Rana

**AWARD**

Passed on 26-9-08

Central Government vide notification No.L-42011/2/94-IR (DV), dated 24-6-94 has referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of BBMB in not granting the time bound promotional/ devised promotional pay scales based on P.S.E.B. pattern, w.e.f. 1-1-1986 adopted by BBMB, admissible after 9/16 years service, to those regular employees (i.e. converted into regular employees from work charged category) of BBME (Irrigation Wing) who have rendered 9/16 years of service, from the date of their initial appointments, is legally just and valid? If not,

then to which relief, these regular employees (i.e. those converted into regular from work charged category) are entitled to and from which date?"

2. The present reference was made by the Central Government on the failure of conciliation proceedings for adjudication of the matter referred in the schedule referred above and the workman prayed for declaring the action of the management as illegal and invalid.

3. The management turned up and opposes this reference.

4. As per office memorandum dated 5-9-08, this case was fixed in pre lok adalat meeting on 26-9-08 for its disposal by adopting the mediation and conciliation mechanism. The representative of the Unions Shri R.K. Singh made a statement that after examining the record of the various workmen, I am satisfied that the claim of the workmen in this reference has already been settled and paid by the management and accordingly, the union withdraws the reference in Lok Adalat. Accordingly the reference is returned to the Central Government as settled in Lok Adalat. Central Government be informed. File be consigned to record.

Chandigarh  
26-9-08

G. K. SHARMA, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2008

क्र.आ. 3071.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार गैरसन इजीनियर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-1 चण्डीगढ़ के पंचाट (संदर्भ संख्या 17/96) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-10-2008 को प्राप्त हुआ था।

[सं. एल-14012/1/95-आई.आर.(डी.यू.)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 22nd October, 2008

S.O. 3071.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 17/96) of the Central Government Industrial Tribunal-cum-Labour Court No.1 Chandigarh, as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Garrison Engineer and their workman, which was received by the Central Government on 22-10-2008.

[No.L-14012/1/95-IR(DU)]

AJAY KUMAR, Desk Officer

**ANNEXURE**

**BEFORE SHRI GYANENDRA KUMAR SHARMA,  
PRESIDING OFFICER, CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, 1  
CHANDIGARH**

**Case No.I.D. 17/96**

Shri Daljit Singh C/o Shri D.R. Sharma 104, Sector-20-A  
Chandigarh - 160001

...Applicant

Versus

(1) Garrison Engineer (Air Force), Chandigarh - 160001

(2) The Chief Engineer, Air Force (W.E.C.) Jalandhar -  
144001

... Respondents

**APPEARANCES**

For the Workman : Sh. D.R. Sharma

For the Management : Sh. K.K. Thakur

**AWARD**

Passed on 8-10-08

Government of India vide notification No.L-14012/  
195-IR (DIF), dated 26-2-96 referred the following industrial  
dispute to this Tribunal for adjudication:—

“Whether the action of the management of Mess  
Represented by the Garrison Engineer (Air Force),  
Chandigarh in not counting the service period of  
Shri Daljit Singh, Refrigerator Mechanic from  
14-9-67 to 30-4-70 for the purpose of seniority, pay  
fixation and other benefits is just and legal? If not, to  
what relief the workman is entitled to and from what  
date?”

The reference was consequent to the failure of  
conciliation proceedings before the ALC Chandigarh. On  
perusal of the statement of claim, W.S., replication and  
other materials on record, it is evident that the main dispute  
is between the workman and the management of respondent  
whether the period on which the workman, has worked on  
daily wages, should be counted and credited to the services  
rendered by the workman as a permanent employee? The  
workman was appointed on casual basis with the  
respondent management on 14-9-67 and worked in this  
capacity up to 2-4-70. Thereafter, he was employed on  
regular basis. The continuity in service was taken by the  
management w.e.f. 3-4-70 instead of his initial appointment

on daily wages on 14-9-67. It is alleged by the workman  
that he was considered for promotion in the year 1971 and  
while considering him for promotion, his entire service  
period including the period rendered by him on casual basis  
was considered. In spite of repeated request, the services  
hereunder as a casual employee was not considered in the  
services as regular employee. He raised an industrial  
dispute and on failure of conciliation proceedings this  
reference was referred by the Central Government.

Management of respondent appeared and opposed  
the claim of workman by filing W.S. It is stated in the W.S.  
that this tribunal has no jurisdiction to dispose of this  
reference because the respondent is not an industry as  
defined under the Industrial Disputes Act, and there is no  
relation between the workman and the management of  
respondent which can be termed as employer and employee  
relationship. It has also stated that the claim is barred as  
filed in the year 1996 after the gap of 26 years. It is further  
stated by the management of respondent that as per rules  
of the department only one break preceding to the regular  
appointment can be considered with the permanent services  
and entire period which the workman served as the casual  
worker with breaks cannot be considered for seniority  
purposes.

Both of the parties adduced their respective evidence  
documentary and oral.

Annexure A1 is the service verification of Shri Daljit  
Singh, Annexure A2 is the promotion list containing the  
name of the workman. Apart from it, the affidavits of the  
parties and their cross-examination are on record. I have  
heard learned counsels for the parties and perused the  
entire materials on record. Learned counsel for the  
management of respondent has also filed written arguments  
along with the photocopies of some relevant provisions of  
Central Administrative Tribunal Act.

The main question for the determination of this  
Tribunal for adjudicating this reference are:—

- (1) Whether the respondent is an industry?
- (2) Whether this Tribunal has got the jurisdiction to  
dispose off this reference?
- (3) Whether the relief for continuity of Service as  
prayed by the workman can be granted by this  
Tribunal as per the facts and circumstances of the  
case and on the basis of the law laid down by Hon'ble  
the Apex Court in this regard?

The term 'industry' has been defined in section 2 (j)  
of the Industrial Disputes Act, 1947 to mean any business,  
trade, undertaking, manufacture or calling or employers

and includes any calling, services, employment, handicraft, or industrial occupation or avocation of workmen.

In *Bangalore Water Supply and Sewerage Board Vs. Rajappa and others* AIR, 1978, S.C.548., 7 Judges Bench of Hon'ble the Apex Court has defined the word industry. As per the above mentioned law laid down by the Apex Court, industry has defined in Sub-section 2 as a vide import as:-

(a) Where there is (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical), and (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss), prima facie, there is an industry in the enterprise.

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

Thus, the test (especially triple test) referred by the Hon'ble the Apex Court in *Bangalore Water Supply case* (supra) is necessary to qualify any institution to be an industry.

Regarding the sovereign functions, Hon'ble the Apex Court in *Bangalore Water Supply case* (supra) held that sovereign functions strictly understood alone does not qualify exemption, nor the welfare activities or economic adventures undertaking by Government or statutory bodies. Even in departments discharging sovereign functions, if there are units which are industries and they are substantially sevegral then they can be consider to come within section 2(j) of the Act, in the definition of industry.

Thus, the decision whether the particular organization is an industry or not is to be taken by the work done and business carried on by it, which absolutely depends on the facts and circumstances of each case. Admittedly the main work of the management of M.E.S. are the provision for buildings, dock, airfields, etc. together with accessory services, such as road, electric and water supply, drainage, furniture etc. and internal fixture generally

maintenance services, i.e. repairs, renewal and upkeep of works as maintenance and operation of certain installations such as electric power stations, pumping stations, sewerage disposal works, hiring and payment of rent, rates and taxes in respect of lands and buildings, railways and the payment of bills for electronic energy. The M.E.S. is also supposed to do the furnishing of necessary particulars to enable them to collect rent for quarters and charges for furniture, electricity and water etc. The all above mentioned functions cannot be termed strictly as the sovereign functions carried on by the department. Some of the above mentioned functions are welfare activities and economic adventures undertaken by the M.E.S., on behalf of the Government of India. Without commenting on the sovereign identity of few functions of the M.E.S., I am of the view, that other major functions, as stated earlier, are related to the welfare activities and economic adventure which can not be termed strictly as the sovereign functions. As per the law laid down by Hon'ble the Apex Court in *Bangalore Water Supply case* (supra) even in departments discharging sovereign functions, if there are units which are industries and they are substantially sevegral, it may qualify for industry. As stated earlier, major functions of the respondent M.E.S. are the welfare activities and economic adventures which are certainly substantially sevegral then the other functions which can be said to be the sovereign functions. On the bases of the above mentioned observations, I am of the view that M.E.S., the respondent, is an industry for the purpose of adjudication of this reference.

In this regard learned counsel for the management of respondent has also argued that the decision of Hon'ble the Apex Court in *Bangalore Water Supply case* (supra) had lost its relevance in view of the subsequent decisions of the Hon'ble Supreme Court in 2005 SCC (L & S) 642 and 2006 *Supreme Court cases* (L & C) 1503, wherein it has been held that the decision in the case of *Bangalore Water supply etc.* (supra) needs to be referred to a larger bench. On the basis of the above observation learned counsel has argued that the decision of the Hon'ble Court in *Bangalore Water Supply case* (supra) is per-inquirium and cannot be applied in the present case. I am unable to accept the contention of learned counsel for the opposite party because this Court is not competent and even should not dare to think whether any judgment of the Hon'ble Supreme Court is per-inquirium. This Court is bound, as per the doctrine of precedent, to apply the ratio of every of the judgment of Supreme Court unless and until not set aside by the subsequent larger bench of the Supreme Court. The law laid down by the Hon'ble Apex Court in *Bangalore Water Supply case* (supra) has yet not been set aside

subsequently by larger bench of the Hon'ble Apex Court, so, I am legally bound to apply the ratio of this judgment in the present case as well.

Learned Counsel for the management has also argued that the remedy lies in the Administrative Tribunal Act, and this Tribunal has got no jurisdiction to dispose of this reference. As stated earlier that respondent is an industry as defined under the Industrial Disputes Act. By way of the nature of work of the applicant, the applicant is undoubtedly a workman as defined in the Industrial Disputes Act. There is a relationship of employer and employee between the workman and the management and as such it cannot be said that the remedy lies before the Central Administrative Tribunal constituted under the Administrative Tribunal Act, 1985. So, I am unable to accept the contention of the learned counsel for the management that this Tribunal has got no jurisdiction to dispose of this reference. Under the Industrial Disputes Act, this Tribunal is competent to answer the reference referred by Central Government.

The question left for determination is whether the workman is entitled for the relief as sought in his claim petition which is based on the reference. There is no dispute on the appointment of workman and duration of service that from 14-9-67 to 2-4-70 he worked on casual basis and thereafter, he was appointed on regular basis and while calculating his length of service only one break preceding to his appointment on regular basis was calculated. The workman as is evident from his affidavit, represented number of times to the management but in vain. The correspondence between the parties are on record and the application (prayer) of the workman was dismissed by the management on the ground that the rules of the department permits only to count the last break and not all the breaks. Thus, it cannot be said that reference is barred by limitation as allegedly raised after 26 years.

I have gone through the breaks from Annexure A-1, which shows that there are notional breaks of one or two days while he was serving on casual basis. This shows that the work was available with the department and the breaks were given to avoid the legal consequences in account of regular working of the workman under the Industrial Disputes Act or any other law for the time being in force. These breaks are certainly unlawful labour practices and should be considered and counted by the Tribunal while calculating the length of service. Hon'ble the Apex Court in two judgments has laid down the same principle. In *Sushil Kumar Yadav Nath Jha Vs. Union of India* and another 1986 LIC 1105 and in *Shri Ravi Narayan Mohapatra Vs. State of Orissa and others* JT 1991 (2) SC

82, Hon'ble the Apex Court has laid down the law regarding the breaks in service and calculation of these breaks. This Tribunal is bound to apply the ratio of both of these judgments as such and the ratio of the judgments is that the rule of the department may not permit the management to count the notional breaks while calculating the length of service, instead of that the sanctity of the contract between the parties should not be given a go by. It is also the ratio in the judgments that in case of the breaks, entire period should be counted while calculating the service rendered by a workman. It is true that in the case before Supreme Court, there was only one break in service and in the present case there are several breaks. But as stated earlier that the breaks are notional and were given with intention to prevent the workman for getting any benefit of his continuous work under the Industrial Disputes Act or any other law for the time being in force. So these breaks were the unlawful labour practices and while applying the ratio of the judgment of the Hon'ble the Apex Court, the workman is entitled for calculating the entire service he rendered in any of the capacity. It is not the case of the management that whenever the work was available workman was provided the work but the documents on record shows that the work was continuous and the breaks were given with intention as stated earlier.

So, on the basis of the above observation, I am of the view that the workman is entitled for counting his services from 14-9-67 to 30-4-70 which he has rendered on casual basis with the management of respondent for the purpose of seniority, pay fixation and other benefits as well. Rules of the department are always to be interrupted in the light of the provisions of the Act and the Judicial Pronouncement thereon. Accordingly, this reference is answered in negative that the action of the management of MES represented by the Garrison Engineer, Air Force, Chandigarh, in not counting the services period of Shri Daljit Singh, Refrigeration Mechanic working from 14-9-67 to 30-4-70 for the purpose of seniority, pay fixation and other benefits is not justified. The workman is entitled for all the benefits of seniority, pay fixation and other benefits from the date of his initial appointment which was made on 14-9-67. The management is accordingly directed to calculate the period from 14-9-67 to 30-4-70 which the workman served as casual worker while calculating the total service rendered by the workman and to afford the benefits like, seniority, pay fixation and other benefits withing the period of one month from the date of publication of this award. Central Government be informed. File is consigned.

G. H. SHARMA, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2008

का. आ. 3077.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार गैरिसन इंजीनियर के प्रबंधन के संबंध में निोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-1, चण्डीगढ़ के पंचाट (संदर्भ सं. 78/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-10-2008 को प्राप्त हुआ था।

[सं. एल.-14012/11/92-आई आर(डी यू)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 22nd October, 2008

S.O. 3072.—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947), the Central Government hereby publishes the award (Ref. No. 78/2007) of the Central Government Industrial Tribunal-cum-Labour Court, No. 1 Chandigarh, as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Garrison Engineer and their workman, which was received by the Central Government on 22-10-2008.

[No. L-14012/11/92-IR(DU)]

AJAY KUMAR, Desk Officer

#### ANNEXURE

**BEFORE SHRIGYANENDRA KUMAR SHARMA,  
PRESIDING OFFICER, CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1  
CHANDIGARH**

Case No. Old I.D. No.-91/93

New I.D. No. 78/2007

Shri. Narinder Singh, C/o Shri D.R. Sharma, H. No. 551,  
Sector-41-A, Chandigarh.

... Applicant

#### Versus

The Garrison Engineer (Utility), M. E. S., Bhatinda (Pb.).

... Respondent

#### APPEARANCES

For the workman : Sri. D. R. Sharma

For the management : Sri. K. K. Thakur

#### AWARD

Passed on : 8-10-2008

Government of India vide gazette notification No. L-14012/11/92/IR (DU) dated 26-8-1993 referred the following industrial dispute to this Tribunal for judicial adjudication:—

“Whether the action of Garrison Engineer (Utility) M.E.S. Bhatinda in terminating the services of Shri Narinder Singh S/o Shri Mehar Singh, Mazdoor w.e.f.

16-1-87 is legal and Justified? If not, what relief the concerned workman is entitled to and from what date?”

This Tribunal after afforded the opportunity of being heard to both of the parties awarding the claim of the workman vide award dated 25-8-2003 directed the management to reinstate the workman within one month from the date of the publication of the award.

The management of Garrison Engineer (Utility) M.E.S. Bhatinda preferred a writ petition challenging the award dated 25-8-03 of this Tribunal. Hon'ble High Court dismisses the writ petition and uphold the award dated 25-8-03. Thereafter, the management of the respondent filed the civil appeal No. 6144 of 2005 in Hon'ble the Supreme Court challenging the award passed by this Tribunal and against the order of the Hon'ble High Court upholding the award. Hon'ble the Supreme Court vide order dated 27-5-07 set aside the award and remit the matter to this Tribunal/Labour Court to decide the objections raised by the management about the maintainability of the proceedings under the Industrial Disputes Act, founded on the claim that it is not an industry.

After receiving the order of Hon'ble Supreme Court. I have afforded the opportunity afresh to both of the parties for adducing evidence both oral and documentary. Heard learned counsels for the parties. Perused the entire materials on record. Learned counsel for the management of respondent also filed the written arguments which are on record.

Heard, learned counsel for the parties. Learned counsel for the workman has argued that M.E. S. Bhatinda is an industry as per the definitions of industry given by the Apex court in Bangalore Water Supply and Sewerage Board Vs. Rajappa and others AIR, 1978 Supreme Court 548, as M.E.S Bhatinda is not exercising sole sovereign functions.

Learned counsel for the management of respondent has argued that this Tribunal has got no jurisdiction to entertain the reference and the claim of the workman because the applicant Narinder Singh is not a workman and he has an equal efficacy remedy available before the Central Administrative Tribunal, constituted under the Administrative Tribunals Act 1985. It is also stated by learned counsel for the management of respondent that the respondent is part and parcel of the defence forces and its work falls within the term sovereign functions and as such the respondent is not an industry. Regarding the law laid down by the Hon'ble the Apex Court in Bangalore Water Supply case (supra) learned counsel for the workman has argued that in view of the subsequent decisions of Hon'ble Supreme Court published in 2005 Supreme Court cases (L&S) 142 and 2006 Supreme Court cases L&S 4503 the law laid down in Bangalore Water Supply case (supra) has lost its relevance because in the above mentioned two

judgments it has been held by Hon'ble and Apex Court that the decision in Bangalore Water Supply case (supra) needs to be referred to a larger bench and accordingly the said decision is per-inquirium and cannot applied in the instant case.

I am unable to accept this contention of the learned counsel because this Tribunal has no jurisdiction or even authority to say that any judgment of Hon'ble the Supreme Court is per-inquirium. This Tribunal is bound to accept and apply the law laid down by Hon'ble the Apex Court in any of the case till it has not been set aside by the subsequent larger bench of the Hon'ble the Apex Court. As the law laid down in Bangalore Water Supply case (supra) is still a good law and has not been set aside as admitted by learned counsel for the management, by the subsequent larger bench of the Supreme Court, this Tribunal is bound to apply the law as such as laid down by the Hon'ble the Apex Court in Bangalore Water Supply case (supra).

After hearing the parties and on perusing all the materials on record, I am of the view that main questions for the determination of the Tribunal in this reference at this stage are : --

- (1) Whether M.E.S. Bhatinda, the respondent is an industry and this Tribunal has got jurisdiction to adjudicate this reference as per the provisions of Industrial Disputes Act?
- (2) Whether the workman has rightly approached this Tribunal for seeking the remedy instead of moving to administrative Tribunal Act as disputed by the management?
- (3) Whether the workman is entitled to any relief?

It is true that Hon'ble the Supreme Court has remitted the matter to this Tribunal Court to decide the objections founded on the claim that the respondent is not an industry. Hon'ble the Apex Court has set aside the entire award and apart from the above mentioned issue regarding the maintainability of the proceedings founded on the claim that that not the industry, this Tribunal has to adjudicate the rest part of the reference as well.

The main contention of the learned counsel of the management is that the respondent M.E.S. Bhatinda is exercising the sovereign powers and as such is not an industry. The term 'industry' has been defined in Section 2(j) of the Industrial Disputes Act, 1947, to mean any business, trade, undertaking, manufacture or calling or employers and includes any calling, services, employment, Handicraft, or industrial occupation or avocation of workmen."

In Bangalore Water Supply case (supra), 7 Judges Bench of Hon'ble the Apex Court has defined the word industry. As per the above mentioned verdict of the Apex

Court, term 'industry' has been defined in sub-section 2(j) in a wide import as :—

- (a) Where there is (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical), and (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of materials things or services geared to celestial bliss), prima facie, there is an industry in the enterprise;
- (b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector;
- (c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations;
- (d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

Thus, the test (especially triple test) referred by Hon'ble the Apex Court in Bangalore Water Supply case (supra) are necessary to qualify any institution to be and industry.

Regarding the sovereign functions, Hon'ble the Apex Court in Bangalore Water Supply case (supra) held that sovereign function strictly understood alone qualified exemption, not the welfare activities or economic adventures undertaking by Government or statutory bodies. Even in department discharging sovereign functions, if there are units which are industries and they are substantially severgal then they can be consider to come within section 2(j).

Thus, the decision whether the particular organization is and industry or not is to be taken by the work done and business carried on by it which absolutely depends on the facts and circumstances of each case. Admittedly, the original work of the management of M.E.S. Are the provision for buildings docks, airfields, etc. together with accessory services, such as roads, electric and water supply, drainage, furniture etc. and internal fixture generally maintenance services, i.e. repairs renewal and upkeep of work as maintenance and operation of certain installations such as electric power stations pumping stations, sewerage disposal works, hiring and payment of rent, rates and taxes in respect of lands and buildings, railways and the payment of bills for electronic energy. The M.E.S. is also supposed to do the furnishing of necessary particulars to enable them to collect rent for quarters and charges for furniture electricity and water etc. All the above mentioned functions cannot be termed strictly as the sovereign functions carried on by the department. Some of the above mentioned functions are

welfare activities and economic adventures undertaken by the M.E.S. on behalf of the Government of India. Without commenting on the sovereign identity on the bases of few functions of the M.E.S., I am of the view, that few functions, as stated earlier are related to the welfare activities and economic adventure which cannot be termed strictly as the sovereign functions. As per the law laid down by Hon'ble the Apex Court in Bangalore Water Supply case (supra) even in departments discharging sovereign functions, if there are units which are industries and they are substantially several, they may qualify for industry. As stated earlier few functions of the respondent M.E.S. are the welfare activities and economic adventures which are certainly substantially sevegral with the other functions which can strictly be termed as the sovereign functions. On the basis of the above observations, I am of the view that M.E.S. the respondent is an industry for the purpose of adjudication of this reference.

The next question before this Tribunal is whether this Tribunal has got the jurisdiction to adjudicate this reference. Learned counsel for the management has contended that the workman should have opted the forum established under the Industrial Disputes Act and this reference is barred. As observed above by this Tribunal that M. E. S., the respondent, is an industry and Shri Narinder Singh who is admittedly a daily wage worker is a workman as defined under the Industrial Disputes Act. There is a employer-employee relationship between the workman and the management, and accordingly, the dispute in between the workman and the management become an industrial dispute for whose redressal an Industrial Tribunal-cum-Labour Court established under the Provisions of the Industrial Disputes Act 1982 is competent. Accordingly, without discussing the powers of Central Administrative Tribunal, constituted under the Administrative Tribunals Act, and as referred again and again by learned counsel for the management, I am of the view that there is a direct employee employer relationship between the workman and the management of MES, respondent is an industry and the dispute between the two is an industrial dispute and accordingly, this Tribunal has got the jurisdiction to redress and adjudicate the present reference.

The last question before this Tribunal for judicial adjudication is to what relief the workman is entitled? This Tribunal has good exercise on this point on earlier occasion as well. I have gone through the evidence adduced by the parties. It is the contention of the workman that he has worked from 1-1-85 to 2-2-87 with the management of MES and had completed more than 240 days of service within one calendar year immediately preceding to the date of his termination. Adding to the contention of workman, the witness of mangement M. W. 1 Narinder Singh has admitted in his affidavit that the applicant worked for 237 days within a calendar year

preceding to the date of his termination. Ex. MW 2 is admitted to both of the parties which shows that the workman has worked from 11-7-85 to 15-1-87. The careful perusal of this document in light of the oral evidence adduced by the parties, it is also evident that Sunday and holidays have not been included while calculating the working days of the workman. Hon'ble the Supreme Court in American Express Vs. Management of American Express, AIR 1996 Supreme Court 458 as held that Sundays and other paid holidays should be taken into account for the purpose of completion of 240 days. If Sundays and holidays are counted into the admitted 237 days by the management the working days of the workman comes much more than the 240. The calculation which is given by the management itself shows that after ignoring sundays and other holidays, when the workman was about to completed 240 days, he was disengaged from the services which certainly amounts to an unfair trade practice. As stated earlier that sundays and holidays are to be counted while calculating the working days as per the law laid down by Hon'ble the Apex Court in American Express case (supra). Thus, on the basis of the above observation, I am of the view that the workman has worked more than 240 days in the preceding calendar year from the date of his termination. It is not the case of the management of respondent that his services were retrenched after given a legal notice and retrenchment compensation as required by Industrial Disputes Act. At the time of the termination of services of the workman no notice and retrenchment compensation was given.

Learned counsel for the workman has also put this fact to the notice of the Tribunal that few persons amongs, the similar situated persons had approached Hon'ble the Apex Court and Hon'ble the Apex Court in Harmesh Lal Vs. Union of India directed the management to reinstate the workmen concerned on the posts held by them before the retrenchment without payment of back wages within one month. The copy of the order of Hon'ble the Apex Court is on record. Hon'ble the Apex Court has already ordered the reinstatement of few workman in the Harmesh Lal's case (supra) without back-wages and the case of those workman was similar to the present workman. Accordingly, I am not hesitating to protect the right of the workman to be reinstate in the services of management of respondent on the post held by him at the time of his termination, without any back-wages.

On the bases of the above observation, I am of the view that workman is entitled for reinstatement into the services on the post he was holding at the time of his termination on both of the counts namely that he has proved before this Tribunal that he worked for more than 240 days in a calendar year preceding to the date of his termination and he was illegally terminated and secondly in the similar circumstances Hon'ble the Apex Court in Harmesh Lal case (supra) has ordered the reinstatement into the services



regarding the co-workers. Accordingly, the management of respondent is directed to reinstate the workman on the same work he was holding/doing at the time of his termination within one month from the date of the notification of this award. However, the workman will not be entitled to any back-wages. The reference is accordingly answered. Central Government be informed. File be consigned.

G. K. SETHI, Presiding Officer

नई दिल्ली, 22 अक्टूबर, 2008

का. आ. 3073. — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसरण में केन्द्रीय सरकार विवाद ईजीयोर के प्रबंधकों के संघर्ष निरोधकों और उनके कर्मचारियों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार द्वारा प्रदत्त अधिकारण/सम समकाल्य नं. 1, चण्डीगढ़ के पंचात (नं. 69/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार द्वारा 22-10-2008 को प्राप्त हुआ था।

[सं. एल-13012/3/98-आई.आर.जी. 3.]

अजय कुमार, डेस्क अधिकारी

New Delhi the 22nd October, 2008

S.O. 3073. In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 69/2006) of the Central Government Industrial Tribunal-cum Labour Court No. 1, Chandigarh as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Garrison Engineer, and their workman, which was received by the Central Government on 22-10-2008.

[No. L-13012/3/98 IR (H)]

AJAY KUMAR, Desk Officer

#### ANNEXURE

**BEFORE SHRI GYANENDRA KUMAR SHARMA,  
PRESIDING OFFICER, CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO. 1,  
CHANDIGARH**

Case No. Old I.D. No.-178/98

New I.D. No. 69/2006

Shri Triyogi Pandit, S/o Shri Hukam Chand, C/o Shri Gopal Arora H. No. 3075, Sector 38-D, Chandigarh-160001

... Applicant

Versus

The Garrison Engineer M.F.S. Bhatinda-151001

... Respondent

#### APPEARANCES

For the workman : Sri Gurbinder Singh

For the management : Sri K. K. Thakur

#### AWARD

Passed on 28-10-2008

Government of India vide notification No. L-13012/3/98/IR (H) dated 11-8-1998 referred the following industrial dispute for judicial adjudication to this Tribunal :-

"Whether the action of the management of Garrison Engineer M.F.S. Bhatinda, Chand. in termination of the services of Shri Triyogi Pandit S/o Shri Hukam Chand a daily wages labourer w.e.f. 3-1-87 is just and legal? If not, to what relief the workman is entitled to and from what date?"

On perusal of the records on record, it is evident that prior to raising an industrial dispute before the conciliation officers, the applicant filed a petition before the Administrative Tribunal, Chandigarh for seeking his reinstatement into the service on account of his illegal termination. The Administrative Tribunal, Chandigarh Bench vide its order dated 20-9-93 dismissed the petition being not maintainable as the workman had not exhausted the remedy available to him under the Industrial Disputes Act. However, the Administrative Tribunal make it clear that the order will not prevent the applicant from availing of appropriate remedy under the provisions of Industrial Disputes Act, in accordance with law.

Aggrieved with the order dated 20-9-93, the workman preferred a special leave appeal before Hon'ble the Supreme Court which was decided by the Supreme Court vide order dated 26-1-99. It was ordered by the Hon'ble Supreme Court that there is an inordinate delay of 1479 days in one case and in two cases the delay of 1077 and 1066 has not been explained to the satisfaction of the Court. Thereafter, the workman raised an industrial dispute and on account of failure of conciliation proceedings, the Central Government referred the above mentioned reference for judicial adjudication to this Tribunal.

This Tribunal after having the opportunity of being heard decided this reference vide award dated 23-9-04, rejecting the claim of the workman on account of delay and laches. The workman filed an application under Article 226 of the constitution in the High Court of Punjab and Haryana and the Hon'ble High Court while considering the point of delay set aside the award dated 23-9-04 on that there was no delay in approaching the appropriate forum under the Industrial Disputes Act, and directed this Tribunal to decide the reference afresh expeditiously after affording the appropriate opportunity to the parties. The above mentioned circumstances after led this Tribunal once again to adjudicate this reference.

The first preliminary objection which is raised by the management is that similar remedy and relief has been



rejected by Central Administrative Tribunal, Chandigarh Bench vide order dated 20-9-93 and the SLP filed against the said order has been dismissed by the Hon'ble the Apex Court. Thus, the order of the Tribunal become final and the workman is estopped to raised the same issue again before this Tribunal.

On perusal of the materials on record, I am unable to accept the contention of the learned counsel for the management because Central Administrative Tribunal, Chandigarh Bench dismissed the petition of the workman on the ground of maintainability. However, the workman was put at liberty for availing the opportunity and appropriate remedy under the provisions of Industrial Disputes Act, 1947 in accordance with law. Against this order that Central Administrative Tribunal has no jurisdiction to entertain the petition filed by the workman, the workman filed a SLP before Hon'ble the Supreme Court, which was dismissed on account of delay and laches. The effect of the dismissal of SLP by Hon'ble the Apex Court will be that the order passed by the Central Administrative Tribunal dated 20-9-93 become final in respect of non-maintainability of the petition before the Central Administrative Tribunal and affording the opportunity for availing the appropriate remedy under the provisions of Industrial Disputes Act. Thus, in compliance of the order dated 20-9-93 which was final on account of the dismissal of SLP by the Supreme Court, the workman raised an industrial dispute under the provisions of Industrial Disputes Act, and on account of failure of conciliation proceedings the same was referred to this Tribunal for judicial adjudication.

As stated earlier this Tribunal rejected the claim of the workman on ground of laches and delay but the award passed by this Tribunal dated 23-9-04 was set aside by Hon'ble High Court of Punjab and Haryana directing this Tribunal for adjudicating the reference afresh.

As per the statement of claim of the workman, he was appointed as workman on 17-2-83 and was drawn 1200/- per month plus allowances at the time of termination of his services on 3-1-87. He worked continuously and his services were terminated illegally against the provisions of Industrial Disputes Act. No notice was given and retrenchment compensation paid to him while terminating his services.

On the other hand, the management by filing the written statement raised objections regarding the maintainability of the claim petition before this tribunal for the reason that M.E.S. Pathankot Cantt. is not an industry and there is no relation between the workman and the respondent which can be termed as employer-employee relationship. As the dispute between the two is not an industrial dispute, it cannot be adjudicated by this Tribunal. Apart from it, it has also been mentioned that the workman has not worked for a period of 240 days in the preceding

year from the date of his termination and no other junior workmen kept in service. Both of the parties were afforded opportunity for adducing evidence. They did so. I have heard learned counsel for the parties and pursued the entire materials on record. The main question for determination before this Tribunal in the present reference are:—

(1) Whether the Garrison Engineer, MES is an industry and the dispute between the workman and the management of respondent is an industrial dispute?

(2) Whether the workman is entitled for the relief sought in his statement of claim?

The term 'industry' has been defined in Section 2(j) of the Industrial Disputes Act, 1947 to mean any business, trade, undertaking, manufacture or calling or employers and includes any calling, services, employment, handicraft, or industrial occupation or avocation of workmen.

In Bangalore Water Supply and Sewerage Board Vs. Rajappa and others AIR, 1978 Supreme Court 548, 7 Judges Bench of Hon'ble the Apex Court has defined the word industry. As per the above mentioned law laid down by the Apex Court, industry has defined in Sub-section 2 as a wide import as:—

- (a) Where there is (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical), and (iii) for the production and/or distribution of goods, and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss), prima facie, there is an industry in the enterprise.
- (b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.
- (c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.
- (d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

Thus, the test especially triple test) referred by the Hon'ble the Apex Court in Bangalore Water Supply case (Supra) are necessary to qualify any institution to be an industry.

Regarding the sovereign functions, Hon'ble the Apex Court in Bangalore Water Supply case (supra) held that sovereign functions strictly understood alone does not qualify exemption, nor the welfare activities or economic adventures undertaking by Government or statutory bodies. Even in departments discharging sovereign functions, if there are units which are industries and they

are substantially severgal then they can be said to come within Section 2(j).

Thus, the question whether the respondent organization is an industry or not is to be decided on the work done and business carried on by it which in turn depends on the facts and circumstances of the case. Admittedly the main work of the management of M.E.S. are the provisions for buildings docks, articling, etc. along with accessory services such as roads, electricity, water supply, drainage, sanitation etc. and other services for generally maintaining services, i.e. repairs and the upkeep of worked as maintenance and operation of installations such as electric power stations, pumping stations, sewerage disposal works, lifting and moving of rent, rates and taxes in respect of lands and buildings, railways and the payment of bills for electricity, etc. The M.E.S. is also supposed to do the functions of a necessary particular, to enable them to collect the quarters and charges for furniture, electricity, etc. All the above mentioned functions cannot be said to be as the sovereign functions carried on by the Government. Some of the above mentioned functions are welfare and economic advantages undertaken by the Government on behalf of the Government of India. With reference to the sovereign identity of law functions of the respondent, it is the view, that other major functions as stated above are related to the Welfare activities and economic activities which can not be termed strictly as the sovereign functions. As per the law laid down by the Hon'ble Apex Court in Bangalore Water Supply case (supra) even in discharging sovereign functions, if there are industries and they are substantially severgal they qualify for inclusion. As stated earlier, major functions of the respondent M.E.S. are the welfare activities and economic advantages which are certainly substantially severgal then the other functions which can be said to be the sovereign functions. On the basis of the above mentioned observations, I am of the view that the respondent, is an industry for the purpose of the definition of this reference.

The next question for determination before this Tribunal is whether this Tribunal is competent to adjudicate the reference. In his written argument, learned counsel for the respondent has emphasised that the proper remedy for the workman, has been to file the petition before the Central Administrative Tribunal. I am of the view that the contention of the learned counsel for the respondent on two grounds —

- (i) The Central Administrative Tribunal, Chandigarh Bench has in a petition filed by the workman held that the proper remedy lies in the Industrial Disputes Act and the order of the Tribunal was final on account of decision of SLP by Hon'ble the Supreme Court in the

order dated 17-2-83. Thus, on direction of the Central Administrative Tribunal, the workman filed the industrial dispute and on account of his filing of certification proceedings the same was referred to this Tribunal for judicial adjudication.

- (2) As stated earlier, the respondent is an industry on the basis of the activities carried on by it. The nature of employment of the applicant also shows that the workman as defined in the Industrial Disputes Act, and the dispute between the workman of the respondent is an industrial dispute. This Tribunal has jurisdiction to adjudicate an industrial dispute between the workman and the management as per the provisions of Industrial Disputes Act, and it cannot be said that the remedy lies before the Central Administrative Tribunal.

Thus, on both the above mentioned grounds, I am of the view that this Tribunal is empowered and competent to adjudicate this reference.

Now the question arises whether the workman is entitled for the relief sought in his statement of claim which is on the basis of the reference referred by the Central Government.

It is contended by the workman that he has worked continuously for 240 days in a calendar year prior to the date of his termination. It has specifically been denied by the management that it has only been stated that he has not worked for a complete year. The requirement of law is continuous working for 240 days in a previous calendar year preceding to the date of his termination and not a complete year. On perusal of the materials on record and on the casual view taken by the management and proved by the workman by his affidavit and documentary evidence Ex. Mark A, I am of the view that the workman has completed 240 days of work in the preceding year before the date of his termination. Mark A is the certificate provided by the department to the workman regarding his work and conduct in which it is mentioned that —

"It is certified that late Mr. Yogi Pandit S/o Shri Tikam Chand had been working as workman from 17-2-83 to 3-1-87 in MES department on muster roll. During the period his work in MES, I found him honest, hard worker".

This certificate is given by Colonel Hora on 24-1-87 and it was countersigned by Virander Kumar, Major Garrison Engineer. The manager of the management Major Grish Kumar M.W. has shown his ignorance about the authority to issue this certificate and counter signed it. But his doubt cannot nullify the issuance of this certificate which proved that late Yogi Pandit worked in the department continuously from 17-2-83 to 3-1-87. Thus, it is

proved that the workman was initially lawfully appointed. He has completed 240 days of work in the preceding calendar year from the date of his termination. He was not given any notice or retrenchment compensation before his termination which makes his termination illegal being against the provisions of Industrial Disputes Act.

It has also brought to the notice of this Tribunal that in the similar circumstances regarding the Co-workers, Hon'ble the Apex Court has directed the department to reinstate their services within one month from the date of the order. I have gone through the judgment of the Hon'ble Apex Court which is on record. The matter before the Hon'ble Apex Court was same as that of the present workman.

Accordingly, on both of the grounds namely that the workman has proved that he has completed 240 days of work in the preceding calendar year from the date of his termination and his termination is void being in the violation of Industrial Disputes Act and secondly that Hon'ble the Supreme Court in the similar circumstances has directed the management to reinstate the workman in the service on the same post he was holding at the time of his termination, I am of the view that the services of the workman should be reinstated within one month from the date of publication of the award without any benefit of back wages. Accordingly, the management is directed to reinstate the workman within one month from the date of the publication of the award. However, it is made clear that the workman will not be entitled for any back wages. The reference is answered accordingly. Central Government be informed. File be consigned.

G. K. SHARMA, Presiding Officer

नई दिल्ली, 23 अक्टूबर, 2008

का.आ. 3074.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार फेडरल बैंक लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, इरनाकुलम के पंचात (संदर्भ सं. 179/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-10-2008 को प्राप्त हुआ था।

[सं. एल-12012/197/1998-आई आर(बी-1)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 23rd October, 2008

S.O. 3074.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 179/2006), of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam, as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Federal Bank Ltd., and their workmen, which was received by the Central Government on 23-10-2008.

[No. L-12012/197/1998-IR (B-1)]

AJAY KUMAR GAUR, Desk Officer

## ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, ERNAKULAM

Present: Shri P.L. Norbert, B.A., LL.B., Presiding Officer

(Friday the 22nd day of August, 2008 / 31st Shrawana, 1930)

(I. D. No. 22/1999 of Labour Court, Ernakulam)

I. D. No. 179/2006

Union : The General Secretary,  
Federal Bank Employees' Union,  
Aluva.

By Adv. Sri C. Anil Kumar

Management : The Chairman,  
Federal Bank Limited,  
Head Office, Aluva.

By Adv. M/s. B.S. Krishnan  
Associates

This case coming up for hearing on 18-08-2008, this Tribunal-cum-Labour Court on 22-08-2008 passed the following:

## AWARD

This is a reference made under Section 10(1)(d) of Industrial Disputes Act. The reference is:

"Whether the action of the management of Federal Bank Ltd. in dismissing the service of the workman Sri Antony Varghese w.e.f. 14-07-1997 is justified? If not, what relief to the workman is entitled to?"

2. The facts of the case in brief are as follows :—  
Shri Antony Varghese, Clerk of Rajkot branch of Federal Bank was charge sheeted for habitual absence without complying with leave rules, riotous and disorderly behaviour in the bank, causing wilful damage to the properties of the bank, insubordination and disobedience of the lawful orders of superiors and doing acts prejudicial to the interest of the bank. A domestic enquiry was conducted and he was found guilty of the charges. The disciplinary authority imposed punishment of dismissal from service on 14-07-97. Aggrieved by the decision the present industrial dispute is raised through the union.

3. According to the union the enquiry was conducted without following the principles of natural justice. The workman was not given a fair opportunity to prove his innocence. Regarding the charge of riotous and disorderly behaviour there was a criminal case. But the workman was discharged by the criminal court. Hence the finding in enquiry regarding that charge is unsustainable. The workman had submitted 15 leave applications and they were accepted by the management. Still the Enquiry Officer found him guilty of unauthorised absence. The workman had

availed Leave Fare Concession after submitting an application and obtaining sanction. However the workman was not able to perform the journey due to compelling circumstances. This was known to the Manager and hence, he did not insist for T.A. bill when the workman resumed duty. The disciplinary authority did not take into consideration the mitigating circumstances of the workman and imposed the punishment of dismissal. Though the workman filed an appeal it was dismissed. The workman was victimised by the management. The punishment is excessive and harsh. The workman is having no means to subsist. He is entitled to be reinstated.

4. According to the management to the charge sheet the workman did not reply. Considering the nature of the misconduct he was kept under suspension from 15-02-1994. The enquiry was conducted in full compliance with the principles of natural justice. The workman was defended by a union office bearer. All the management witnesses were cross-examined. Though opportunity was given the workman did not examine any one or produce any document. Copy of the findings of Enquiry Officer was furnished to the workman. He was given opportunity to make submissions to the disciplinary authority. Thereafter punishment was proposed and after hearing the workman the punishment of dismissal was imposed. The appellate authority concurred with the findings of Enquiry Officer and confirmed the punishment. A criminal case was registered by the Executive Magistrate, Rajkot city under Section 107 of Cr. P. C. He was discharged under Section 118 Cr.P.C. subsequently. That cannot affect the findings in the enquiry. The fact that leave applications were submitted does not mean that they were sanctioned. The workman had not complied with leave rules. After availing a LFC the workman did not undertake the journey. As per rules he has to remit the advance drawn immediately after resuming duty. He has to submit T.A. bill of the journey undertaken within 7 days of resuming duty. However the workman failed to do so. After a very long time the bank had to recover the amount. The punishment is in proportion to the gravity of the misconduct. There is no reason to reduce the punishment.

5. In the light of the above contentions the following points arise for consideration:-

1. Are the findings sustainable?
2. Is the punishment proportionate?

The evidence consists of Ext. M1 Enquiry Officer's

6. Point No.1:- Sri.Antony Varghese, the workman was a Clerk in Rajkot branch of Federal Bank. While so far serious misconduct disciplinary action was initiated. Ext. E1 is the charge sheet. The charges are:

- (1) He remained absent without complying with

- (2) He availed Leave Fare Concession (LFC) during August-September 1993 and he did not advance T.A. Bill Rs. 520. However, he did not perform the journey and also failed either to remit or to submit T.A. bill within time.

- (3) On 29-01-1994 though he was on leave he rang up and enquired whether the office had received a letter which was received by the bank and which was addressed to his wife. The officer was unable to find the letter. The workman was not satisfied with the answer. He went to the bank in the afternoon for more violent abuse and threatened the officer there and damaged properties of the bank.

The misconduct is not only gross misconduct, except one, i.e. absence without leave. Of the gross misconduct the riotous and disorderly behaviour of 29-01-1994 is considered more serious.

7. On 29-01-1994 the workman was not on duty. But he rang up and enquired whether the office had received a letter addressed to his wife. MW1 an officer of the branch had attended the call. The Manager was not in office. MW1 replied that he did not know of such a letter and he would check up with the Manager when he returns. After sometime the workman called MW1 again over phone and enquired about the letter. The witness gave the same answer as the Manager had not yet returned. In the afternoon the worker went to the bank and enquired about the letter. Get violent and intimidatory. He and five were around the office with dirty words. He threw down the typewriter, papers and other items from the table of MW1 and toppled the table of MW1. A staff of the branch (Shri Dilip) took him out of the office. But after a few minutes he rushed back to Manager's cabin, smashed glass panes, damaged plywood cover of the cabin, pulled down Manager's telephone and tried to topple Manager's table but did not succeed. Shri. Mr. Dilip prevented him, and took him out of the bank. MW1 along with another officer went to the police station and lodged a complaint. The police registered a case, prepared FIR and arrested the workman. MW1 made a statement to the Enquiry Officer. MW2 another officer of the same branch had witnessed the incident. He too deposed at the same time. MW3 was the then Branch Manager. He says that around 11.30 a.m. he had gone out of the branch to attend a social function. However, on that day he was not able to return to his office. On the next day he resumed duty. On the following day when he resumed duty (01-02-1994) he was told by MW1 about the incident. When he reached the office on 01-02-1994 he saw the damages to the furniture and properties including broken glass. Photographs of damage were taken and forwarded to D. M. (PIR department). MW1 lodged another complaint with the police. All the witnesses

8. Ext. ME-33 is bill dated 12-02-1994 for replacing 2 glass panes. Ext. ME-34 is cash debit voucher dated 12-02-1994 evidencing payment for replacing glass panes. Ext. ME-32 is photograph. Ext. ME-35 is a letter of Manager sent to DGM reporting about the damage done to the properties of the bank by the workman and requesting for sanction to replace the typewriter.

9. As against this evidence of the Management absolutely no evidence was rendered by the workman. To Ext. E1 charge sheet the workman did not reply. But when the Enquiry Officer read out the charges he denied them. It is on the basis of the evidence adduced by the management that the enquiry officer found the workman guilty of riotous and disorderly behaviour. I find no lapse in the appreciation of evidence by the Enquiry Officer.

10. The next allegation against the workman is that he remained unauthorisedly absent on 17 occasions between 22-05-1993 and 15-12-1993. In spite of repeated instructions he did not submit leave applications. According to MW3 the Branch Manager the workman gave several leave applications together in a bunch for the absence on 17 occasions on a subsequent date. Exts. ME-3 and 4 are letters sent to the workman from the branch requiring him to regularise his absence by submitting leave applications. Yet the workman did not apply for leave. Ext. ME-4A is acknowledgement card of Ext. ME-4 letter. Ext. ME-5 is another similar letter addressed to the workman. But it returned unserved. Ext. ME-9 to 23 are leave applications. Though the leave applications bear different dates, according to the Manager they were submitted in a bunch on the same day. Ext. ME-24 is bulletin of the bank which contains leave rules. As per rule (1) an employee has to submit leave application one month before seeking leave except in urgent cases or unforeseen circumstances including illness. Leave of all kinds cannot be claimed as of right. It is the discretion of the management to sanction or refuse leave according to the exigencies in the bank. The workman was not able to convince the Enquiry Officer that these applications were submitted on time. He had not complied with the leave rules and hence was found guilty of absence without leave. There is no infirmity in the finding.

11. The next allegation is that the workman had availed leave fare concession and had availed leave for 15 days from 28-08-1993 to 11-09-1993. He availed advance of Rs. 760/- on 05-08-1993 and another sum of Rs. 760 on 06-08-1993 for booking ticket. After the journey and after resuming duty he has to submit T.A. bill within 7 days. Admittedly the workman did not undertake the journey. Naturally he should have remitted back the advance money immediately on resuming duty. He neither remitted money nor submitted T.A. Bill. Ext. ME-26 is L.F.C. application of the workman. Ext. ME-27 and 28 are request letters of worker for advance of Rs. 760 each. MW-3 had instructed the worker by Ext. ME-3, 4 and 5 to remit T.A. advance. He did not comply with the direction. The advance was availed in

August 1993. At last the management had to recover the advance amount in 4 instalments in 1995 from 28-04-95. The explanation of the worker in the claim statement that the Manager had not insisted for T.A. bill when he resumed duty is no excuse to keep the advance amount with him for 2 years without undertaking the journey. Ext. ME-31 is account receivable A/c. ledger folios. It shows that an amount of Rs. 1,520 was recovered from the workman in 4 instalments in 1995. Thus the worker had disobeyed the lawful orders of his superior and thus committed the misconduct.

12. Thus the Enquiry Officer had found the workman guilty of all the charges based on evidence on record. Absolutely no evidence was adduced by the worker. Therefore I hold that the findings regarding guilt of the worker suffer from no infirmities.

13. Point No. 2:— The disciplinary authority after analysing and assessing the evidence discussed by the Enquiry Officer concurred with his findings and proposed the punishment of stoppage of increment for 3 months each for absence without leave and for disobedience of reasonable and lawful orders of superior and dismissal from service without notice for riotous, disorderly and indecent behaviour. These punishments were to run concurrently. The mitigating circumstances that the workman is out of employment since the date of suspension and he is the sole bread winner of his family consisting of wife and a daughter was considered by the disciplinary authority. The same extenuating circumstances are put forward before this court seeking lesser punishment. But considering the nature of the misconduct especially the incident of 29-10-1994 when the officer of the bank were threatened, properties of the bank were damaged and even the cabin of the Manager was not spared I don't think that the workman deserves any lenient treatment in the matter of punishment.

In the result an award is passed finding that the action of the management of Federal Bank Limited in imposing the punishment of dismissal from service is legal and justified and the workman is not entitled for any relief.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 22nd day of August, 2008.

P. L. NORBERT, Presiding Officer

Appendix

Witness for the Union—Nil.

Witness for the Management—Nil.

Exhibits for the Union—Nil.

Exhibit for the Management

M1-13-03-2002 Enquiry file.

नई दिल्ली, 23 अक्टूबर, 2008

का.आ. 3075.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केंद्रीय सरकार यहाँ कि ऑफ पटियाला के प्रबंधकों के संबंध विवादों और उनके प्रबंधकों के बीच, अनुबंध में विवाद औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण (अधिनियम नं. 13 के पंचाट (सदस्य मंडल) 115/1991) को प्रकटित करती है, जो केंद्रीय सरकार को 23-10-2008 को प्राप्त हुआ था।

[सं. एन. 12012/211/1991-आईआर (क. 1)]

अजय कुमार, हेड ऑफ आउट

New Delhi the 23rd October, 2008

S.O. 3075.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 115/1991) of Central Government Industrial Tribunal-cum-Labour Court No. 1, Chandigarh as shown in the Annexure to the Industrial Dispute between the management of State Bank of Patiala, and their workman, received by the Central Government on 23-10-2008

[No. 1-12012/211/1991-IR (C-1)]

AJAY KUMAR, De K. Officer

#### ANNEXURE

**BEFORE SHRI GYANENDRA KUMAR SHARMA  
PRESIDING OFFICER, CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-1,  
CHANDIGARH**

Case No. 1. D. 115/91

General Secretary,  
State Bank of Patiala  
Staff Union, 3135, Sector 22-D,  
Chandigarh-160022

...Applicant

*Versus*

General Manager,  
State Bank of Patiala,  
The Mall, Patiala-147001

...Respondent

#### APPEARANCES:

For the Workman : None

For the Management : Sh. N. K. Zakhami

#### AWARD

Passed on 1-10-08

Government of India vide Notification No. 1-12012/211/91-IR (B-III) dated 18-9-91 referred the following industrial dispute for judicial adjudication :—

"Whether the action of the General Manager, State Bank of Patiala in stopping three increments w.e.f. 1-8-87, 1-8-88 and 1-8-89 in respect of Sh. Rajinder Sharma, Cashier-cum-Godown Keeper is legal and justified? If not, to what

relief the concerned workman is entitled to and from what date?"

As per the averments in statement of claim and written statement, the workman was charge-sheeted on 4-7-85 for permitting M/s. Raj Enterprises of Khanna for removing the stocks from godown consisting of six tractors which were pledged to the bank as security in the cash credit amounted to Rs. 2000 putting the bank's interest to jeopardy. The workman Sh. Rajender Kumar was also charged for not reporting the bank gradually about the placing of the tractors, not recording the full particulars of the tractors pledged with the bank and for not maintaining the concerned register properly. Sh. Rajender Kumar the workman informed the bank vide letter No. n/d dated 17-9-84 about the removal of tractors which were pledged by the borrower to the bank without any authority and permission from the bank. Branch Manager reported the matter to higher authorities and higher authorities accordingly, directed to enquire the matter. The charge sheet was given to the workman. The workman replied to the charge sheet. Dissatisfied with the reply an inquiry was ordered to be conducted and an enquiry officer was appointed. After inquiry, enquiry officer gave its report with regard the proving of the charges except one which he held to be partially proved. As per the enquiry report, the charge regarding the removal of stocks (6 tractors) with the knowledge of the workman was proved. It was also held to be proved that the workman failed to record the proper particulars of the tractor and also failed to maintain the relevant register. Charge No. F which is regarding the key register was held to be partially proved. The disciplinary authority, after giving the opportunity of being heard and hearing workman in person passed sentence directing the stoppage of 3 annual increments w.e.f. 1-8-87, 1-8-88 and 1-8-89. The workman filed an appeal which was also dismissed. Hence this reference.

Both of the parties were afforded the opportunity for adducing evidence and of being heard. The workman Sh. Rajender Kumar was examined as WWT whereas K. D. Trivedi, the enquiry officer was examined as MWI. I have heard the parties and their legal representatives and perused all the annexures, enquiry reports and proceedings of enquiry.

The main questions for determination before this Tribunal are whether the workman has knowledge, prior his information to the bank dated 17-9-84, about the removal of stocks of 6 tractors pledged with the bank and whether he has committed the misconduct for non-maintaining the relevant registers pertaining to the pledged valuable security? If I divide it into sub-heads the questions to be answered by the Tribunal in this reference are:—

1. Whether the enquiry officer conducted the enquiry in a fair, proper and reasonable manner and there has been no violation of any rules of

principle of natural justice while conducting the enquiry ?

2. Whether on the basis of the evidence oral and documentary adduced before enquiry officer, enquiry officer has rightly come to the conclusion on the charges as proved against the workman?
3. Whether the disciplinary authority and appellate authority while awarding punishment for stoppage of 3 increments have applied their minds and the punishment given was in proportionate to the misconduct?

So far as the procedural fairness of enquiry is concerned, on perusal of the materials on record, it is evident that after framing of the charge, copy of the charge sheet was provided to the workman and enquiry officer while conducting the enquiry adopted the procedure mentioned in the bipartite settlement. On every date of hearing, opportunity of being heard was given to the workman. Thus, on the basis of the materials on record, I am of the view that the enquiry officer and thereafter, the disciplinary authority, adopted a fair and reasonable procedure while conducting the enquiry and awarding punishment. Their seems to be no violation of any of the rules of principle of natural justice.

This Tribunal has also to decide the matter whether the enquiry officer has rightly held all the charges well proved except charge No.F, which he held to be partially proved? Charge No.A is regarding the removal of stocks which were pledged to the bank unauthorizedly with the knowledge of the workman. I have gone through the evidence of all the witnesses which were adduced before the enquiry officer. PW3, who was the Branch Manager at the relevant time in the branch concerned, had deposed that the branch came to know through the bills received under L/C and that too after 10 to 15 days from the date of bill. It has also been stated by PW3 that it was not possible for the branch to have complete control over the movement/sale of tractors because no such clause was stipulated in the terms of the letter of credit sanctioned by controlling office. PW3 further stated that the procedure adopted by the branch in this behalf, was such that it could not ascertain whether the particular tractor pledged with the branch was also stored? PW3, in his entire evidence has not stated that the stocks of tractors which were pledged to the bank were removed with the knowledge of the workman. A general description of facts how the tractors were pledged and how the custody was changed, where they were kept placed are stated in entire evidence. Moreover, he has certain reservations about the procedure which was adopted for placing of the tractors. This is the case with PW4 as well.

It is true that PW3, PW4 and the other witnesses of the bank have failed to establish the direct knowledge or

the workman for removing the stocks but one thing is established that the tractors which were pledged with the bank as the security were chained with locks and keys of locks were always lying with the workman. It is not the case that the partner of the concerned firm broke over the lock to dispose of the tractors against the violation of terms and conditions of the contract executed with the bank while going for advances. It clearly proved that keys were provided to the partner and the same after opening the locks and chains disposed of the tractors. Undoubtedly, these keys were in the custody of the workman. Thus, act of the workman shows that he has reason to belief that the partner of the firm is not to be provided in any case, the keys of the locks without prior permission of the Manager. But the keys were transferred to the partner that resulting in the removal of the tractors pledged to the bank. In my opinion, this gives the cause to the enquiry officer to hold that the charge No. A is proved against the workman. The enquiry officer was right in holding it as the departmental proceedings and the proceedings before this Tribunal are of different nature than the proceedings before the Civil Courts. In the proceedings before the Tribunal and in departmental proceedings, the presiding officer or enquiry officer, as the case may be have to see whether there is a reasonable nexus between the act committed and misconduct proved. In the present case, all the keys were lying with the workman and the tractors which were pledged with the bank as security were removed from the custody of the bank. In that case, it will not be surmises and conjectures that the workman has a reason to know unauthorized the removal of stocks. As per the evidence on record, the stocks were removed much earlier and the workman informed the bank quite later without any explanation. Whereas, he was supposed to have up-date information about the custody. Thus, there is a nexus between the facts that the workman was responsible for the custody of keys and for updating himself regarding the proper stock of tractors which were pledged with the bank with the fact that the stocks were removed unauthorizedly without the permission of the Manager of the bank. Thus, enquiry officer has rightly hold the charge No. A proved against the workman.

Likewise the copies of all the registers were incomplete. The chassis engine number and other relevant particulars were not registered in the relevant register and once again, it was the responsibility of the workman to get them registered. The register relating to the keys was also incomplete.

Accordingly, in my opinion, the enquiry officer has rightly held as all the charges proved against the workman except charge No.F which was held to be proved partially.

Now, this Tribunal has to decide whether the disciplinary authority has pronounced the punishment in proportionate to the misconduct of the workman. Certainly it was a gross negligence on the part of the workman and







(once) were imposed. Still there is no improvement. The workman had not submitted a reply to the charge sheet. The enquiry was conducted in compliance with the principles of natural justice. The workman was defended by Vice President of the Union. The management witnesses were cross examined. List of witnesses and copies of documents were given to the workman on time. Two witnesses were examined and documents were marked on the side of the workman. It is on the basis of the evidence on record that the Enquiry Officer found the workman guilty of the charges. The disciplinary authority after hearing him imposed the punishment of dismissal from service. The appellate authority concurred with the findings of Enquiry Officer and the punishment imposed by the disciplinary authority. The workman had failed to submit leave applications and had not complied with the leave rules. He was irregular in service. In spite of repeated advice the workman continued to remain absent un-authorisedly. There are no mitigating circumstances to reduce the punishment. Therefore there is no reason to interfere with the findings or the punishment.

5. In the light of the above contentions the points that arise for consideration are :—

1. Whether the findings are sustainable?
2. Whether the punishment is excessive?

The evidence consists of Ext. M1 Enquiry File alone.

6. Point No. 1: The workman Sri Dilip Paul was a bankman of Overseas Branch of Federal Bank, Calcutta. As per the charge sheet the allegation against him is that he was in the habit of absenting from duty without applying for leave. He remained absent from 05-06-2000 to 07-06-2000 without applying for leave and again from 13-06-2000 onwards continuously. His leave records were unsatisfactory. For similar misconduct of unauthorised absence 3 times minor punishments were imposed. The misconduct of the workman fall under Clause 19.5 (f) of First Bipartite Settlement and Clause 21 (ii)(P) of 6th Bipartite Settlement. To the charge sheet the workman did not submit any explanation. However he attended the domestic enquiry. He was defended by Vice President of the union. He was furnished with copies of documents and list of witnesses on the management side. The management witness (MW1) was cross examined. On workman's side two witnesses were examined including the workman and 15 documents were marked. The preliminary objection of the union that the Enquiry Officer had not complied with the principles of natural justice is without any basis.

7. Regarding the allegations MW 1 the Chief Manager of the Branch was examined. He has given evidence in tune with the allegations raised against the workman. The workman remained absent from 05-06-2000 to 07-06-2000. His leave application is Ext. ME 1, dated 08-06-2000 for the said period 05-06-2000 to 07-06-2000. Along with the leave

application he produced ME2 and ME3 medical certificates and fitness certificate which are dated 05-06-2000 and 08-06-2000 respectively. However in the leave application he has not specified the nature of the leave he required. Hence he was asked by the Chief Manager by Ext. ME5 to specify the nature of leave he had applied for. Thereafter the workman submitted another leave application Ext. ME6 along with ME7 medical certificate and ME8 fitness certificate. The 2nd application Ext. ME6 was submitted on 26-12-2000. Even the first leave application Ext. ME1 was submitted to the bank only after the period of leave. As per the leave rules he should have submitted the leave application within the shortest possible time in case of urgent needs or sickness or else leave applications should be submitted in advance. Hence the Enquiry Officer has found that the workman has not complied with the leave rules in respect of the period of absence from 05-06-2000 to 07-06-2000. So far as the absence from 13-06-2000 onwards is concerned the workman did not apply at all for leave. But according to the workman he had informed the bank about his illness by forwarding medical certificates Ext. DE5 under certificate of posting (Ext. DE6). Ext. DE5 medical certificate is dated 30-06-2000 and DE6 postal receipt is dated 01-07-2000. However the bank denies having received it. On the basis of Ext. DE6 perhaps it could be presumed that the medical certificate was forwarded to the bank. But admittedly no leave application was sent. The production of a medical certificate can at the most be taken as an intimation to the bank. But the employee has to apply for leave and specify the nature of leave he wants. There was no such application for the continuous absence from 13-06-2000 onwards. This was the position even when the enquiry commenced. It is submitted by the learned counsel for the union that the management could have substantiated their case that Ext. DE5 medical certificate was not received by the management by producing the inward register. It is true that the inward register is not produced by the bank. But even if it is produced at the most it may be seen that Ext. DE5 medical certificate was sent to the bank and nothing more. Without leave application the management cannot consider or grant leave on the basis of a mere medical certificate. The rules are contained in Ext. ME 16 bulletin of the bank dated 26-03-1997 which prescribes that application for leave should be submitted well in advance except in emergent circumstances. Even in such urgent cases leave application should be submitted at the earliest opportunity. There is no satisfactory explanation for the worker as to why he did not submit leave application for the period from 13-06-2000 onwards. It is a gross misconduct within Clause 21(ii)(P) of 6th Bipartite Settlement dated 14-02-1995.

8. The union has a case that the workman never remained absent purposely. He was an asthmatic patient. He suffered asthma due to pollution on account of operation of big generators in the bank especially during 2000 when there was electric failure often. This affected

the health of the worker and hence he had to take leave. PW 1 is a clerk of the same branch. He deposed before the Enquiry Officer that there was pollution due to the working of generators in the bank for about 6 months in 2000. The workman was examined as DW2. He too had deposed so, it is not denied by the management that during the period of 2000 for about six months there was some electric failure in the bank and generators were used for power supply. But the evidence reveal that even prior to 2000 the workman was suffering from asthma. Ext. ME-17, 18 and 19 are punishment orders of 1990, 1994 and 1997 imposing minor punishments for unauthorised absence. Thus the workman was in the habit of remaining absent on and off on sick grounds sometimes applying for leave and sometimes without applying for leave and without complying with leave rules. This conduct of the workman occasioned disciplinary action thrice. Therefore there is no substance in the contention of the union that the workman suffered ill health due to pollution in the bank. Again there is no justification in not applying for leave even if pollution had aggravated the sickness of the workman. The bank is not supposed to grant leave suo-motu taking notice of the illness of an employee. Ext. ME-16 Leave Rules Clause 1.1 (same as 13.2 of First Bipartite Settlement) reads :

"An employee who desires to obtain leave of absence, other than casual leave, shall apply in writing to the Manager or any other officer appointed for the purpose. Such application for leave shall be made not less than one month before the date from which the leave is to commence, except in urgent cases or unforeseen circumstances including illness when it is not possible to do so. The Manager or the officer empowered by him in this behalf shall issue orders on such application as soon as practicable and in cases of an urgent nature immediately. If the leave asked for is granted, an order showing the date of commencement of the leave and date on which the employee will have to resume duty shall be issued to him."

9. The workman has not complied with the leave rules and hence the absence could be treated only as unauthorised. Exts. D 1 to D-15 are medical certificates, fitness certificates, postal receipts and X-ray reports regarding the illness of the workman. It is seen that regarding certain intermittent periods of absence no medical certificates were produced. That is, for the absence on 31-07-2000, 01-08-2000 and for the period from 03-09-2000 to 05-09-2000 and on 07-11-2000, 08-11-2000 and 10-01-2001. The union has no explanation regarding the absence of the workman during these periods which are not covered by medical certificates. The Chief General Manager of the bank had issued Ext. ME-11 notice by registered post regarding the unauthorised absence from 13-06-2000 onwards. There was no response from the workman. Ext. ME-12 is the postal receipt for having sent Ext. ME-11 by registered post. Ext.

ME-20 to 20H are copies of attendance register for different periods from 2000 to February 2001. Thus the workman remained absent without applying for leave from 05-06-2000 to 07-06-2000 and thereafter from 13-06-2000 onwards continuously. The Enquiry Officer has rightly found the workman guilty of unauthorised absence without intimation continuously for a period exceeding 30 days as per Clause 21 (ii)(P) of 6th Bipartite Settlement. The findings are based on records. There is no reason to interfere with the findings.

10. Point No. 2 --- The punishment imposed is dismissal from service. Considering the habitual absence of the workman without complying with leave rules and without intimation to the bank, the disciplinary authority imposed the punishment of dismissal. The mitigating circumstances stated by the workman is that he is having family consisting of wife and 2 children and he is without job. But these circumstances never deterred the workman from remaining absent. Despite disciplinary action taken thrice and advice of the management to be regular in service, he did not improve. The bank cannot tolerate an employee who turns up for work only as and when he wishes. No office can function smoothly if employees flout the discipline of an office and do not follow the directions and rules of the office. In the circumstances I find no compelling reason to reduce the punishment.

In the result an award is passed finding that the action of the management in imposing the punishment of dismissal of the workman is in proportion to the misconduct. He is not entitled for any relief.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 21 st day of August, 2008

P. L. NORBERT, Presiding Officer

#### APPENDIX

Witness for the Union — Nil.

Witness for the Management — Nil.

Exhibits for the Union — Nil.

Exhibit for the Management

M 1 — 28-11-2006 Enquiry file.

नई दिल्ली, 24 अक्टूबर, 2008

का.आ. 3077.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केंद्रीय सरकार गजेट में नियोक्ताओं और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1

धनबाद के पंचायत (संदर्भ संख्या 27/96) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-10-2008 को प्राप्त हुआ था।

[सं. एल-42012/112/95-आई.आर.(डी.यू.)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 24th October, 2008

**S.O. 3077.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 27/96) of Central Government Industrial Tribunal-cum-Labour Court, No. 1, Dhanbad, as shown in the Annexure, in the Industrial Dispute between the management of Rajendra Memorial Research Institute of Medical Science and their workman, which was received by the Central Government on 24-10-2008.

[No. L-42012/112/95-IR(DU)]

AJAY KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 AT DHANBAD

**PRESENT :** Shri H. M. SINGH, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act., 1947.

Reference No. 27/96

**Parties :** Employers in relation to the management of Rajendra Memorial Research Institute of Medical Science Patna and their workman.

#### APPEARANCES

On behalf of the workman : Mr. D. K. Jha.  
Advocate

On behalf of the employers : Mr. A. K. Trivedi,  
Advocate

State : Jharkhand Industry : Medical Research

Dated, Dhanbad, the 17th August, 2008

#### AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-42012/112/95-IR(DU), dated the 27th June, 1996.

#### SCHEDULE

"Whether the action of the management of Rajendra Memorial Research Institute of Medical Science in terminating the services of Shri Munna Ram is justified? If not, to what relief the workman is entitled to?"

2. The case of the workman is that he was working at the time of his termination as Sweeper with the management and he is very poor and is hardly in a position to even meet his bread and butter. It has been stated that he has joined the service in Rajendra Memorial Research Institute of Medical Science, Patna in subordinate category as Sweeper in the year 1984 and continued to work upto 30-1-94 when his services were abruptly dispensed with by the Management of the Institute without assigning any reason therefor and without paying any retrenchment compensation and without issuing any notice and making payment in lieu of notice. It has been stated that the concerned workman had put in a continuous service from 1988 onwards and completed more than 240 days of continuous service in a calendar year within the meaning of Section 25F of the I.D. Act., 1947. The institute has also issued certificate to the concerned workman for working for more than one and half year on 8-1-90. He has performed his duties in satisfactory manner cleaning the campus, drains, Lavatory, sweeping the compound, rooms and verandah of the offices/institute etc. He was employed for the whole day and he was even required to work on Sundays and Holidays. But the concerned workman was never paid wages for working on those days. The concerned workman used to be paid wages on daily wages basis through petty cash vouchers and also through bankers cheques on banker's account bearing No. C & A-25 operating in the SBI Branch. It has also been stated that he has worked with satisfaction of the officers of the Institute and the institute is not paying him even the minimum wages and he was working with hope that he will be absorbed permanently in future and in this respect he has made representation in the year 1993 to the Director of Indian Council of Medical Research, Delhi who has called for comments in that matter from the Director of the Institute Patna on 21-12-93 and 23-5-94.

3. It has been further stated that the Institute instead of absorbing the concerned workman terminated his services w.e.f. 30-1-94 though two posts of Sweepers are still vacant. The management, however, after terminating the services of the concerned workman on 30-1-94 appointed fresh hands like Babloo Prasad without considering the case of the workman for re-employment in terms of Section 25H of the I.D. Central Rules, 1947. It has also been stated that the management retrenched the services of the concerned workman and retaining the juniors ignoring the claim of the workman concerned. He has made representation in this regard to the management in writing on 1-9-94 but of no use and thereafter raised an industrial dispute before the Asstt. Labour Commissioner (Central) Patna on 28-12-94 for his intervention and amicable settlement of the matter. The ALC(C) Patna issued notice to the management on 24-7-95 when it ended in failure. The ALC(C) Patna after recording failure of conciliation submitted his report to the Govt. of India, Ministry of

Labour, New Delhi on 1-8-95 under Section 12(4) of the Act. Thereafter the Govt. of India, Ministry of Labour, New Delhi has referred the dispute before this Tribunal for adjudication under Section 10(1)(d) of the I.D. Act, 1947.

4. It has also been alleged that the management did not follow Rule 78 of the I.D. (Central) Rules, 1957 in the matter of re-employment of retrenched workman as the management after termination of services of the concerned workman employed Ram Pravesh Verma in his place. Management also violated the provision of Section 25H of the Act for re-employment while considering employment of fresh hands after termination of services of the concerned workman. It has further been alleged that the management has violated Section 25G of the I.D. Act because services of the jobber have been retained and they have adopted unfair labour practice. It has been prayed on behalf of the workman that an Award be passed in favour of the concerned workman directing the management to reinstate him in his original job with payment of back wages.

5. In the rejoinder it has been stated on behalf of the workman that the Research Institute is an industrial dispute can be raised and reference can be made for adjudication under I.D. Act, 1947. In this case the Institute is getting clearing work done through Sulabh International at a cost of Rs. 20,000 per month which engage labourers. Payment to Sulabh International was made vide cheque No. 902537 dt. 30-6-97 and cheque No. 902449 dt. 3-8-97 for Rs. 19,600 for July, 1997 and August 1997. The workman wants re-employment and it is immaterial whether appointment was made or not, whether appointment was made legally or illegally and it is the obligation on the part of the management to absorb the concerned workman while he has completed 240 days of service and accordingly he requires permanency as a policy of the I.D. Act.

6. Management has filed W.S. stating that Rajendra Medical Research Institute, Patna on medical research work and it does not carry on any business or any work of Public Utility or in the interest of fund and it is fully financed by the Central Government in the course of carrying on research work, patients are fully catered and they get free accommodation and free diet. The management bears all expenses of the patients relating to his treatment in furtherance of carrying on research work on such diseases. It further has submitted that for 15 years research work is going on treating medicine and treatment for prevention, etc. Kala-az and cure of Kala-az of Kala-az which is more widely spread throughout the State of Bihar and this duty is entrusted by JCMR New Delhi. For this purpose fund is allotted by the Govt. of India. The Institute for all intent and all purposes is a permanent unit of I.C.M.R. an autonomous body directly under the Central Management and direction of the Central Govt. fully financed by the Central Govt. and it is not an Industry having any kind of business interest. Since it has no business interest and out

producing any goods to be sold in market, it is not an industry. The persons are not engaged for putting their labour in production of goods or manufacture of articles for Public consumption. It is not an Industry. As a result no industrial dispute can be raised under the I. D. Act, on the grievances of any workman engaged in the Institute.

7. It has been alleged that the concerned workman was engaged from time to time and he never worked more than 240 days in any calendar year and he was never appointed on regular basis. No appointment letter was issued to him. This is totally false to say that his services were abruptly dispensed with by the management of the Institute and there is no question of paying any retrenchment compensation and issuing any notice etc. He was only working as daily wages for a short period as and when needed by office. He has never completed 240 days since 1988 in a year. It has been denied that the certificate issued by B.K. P. Thakur, Administrative Officer was vague. It was issued on the request of the concerned workman with a view to get employment anywhere. Accordingly they have prayed to pass an Award rejecting the claim of the concerned workman.

8. A rejoinder has been filed by the management stating the facts as stated in their W.S.

9. Management in order to substantiate their case have examined MW-1 Satyendra Kumar who has proved Ext. M-1 and M-1/1 and Ext. M-2, M-3 and M-4. Management also examined MW-2 Mukesh Narain Sinha.

10. The concerned workman produced himself as WW-1 and proved documents which are marked as Ext. W-1, W-2, W-3, W-4, M-1/1, W-5, W-6.

11. Heard Ld. counsel for the management as well as workman.

12. The first question to be decided is whether Rajendra Memorial Research Institute is an industry or not. In this respect Ld. counsel for the workman argued that this is an industry and industrial dispute can be raised under I. D. Act. Ld. Counsel for the management argued that this is not an industry because it does not carry out any production for public purposes but does only research work of Kala-az and provides free medicines and carry out laboratory test to the patients. In this respect Ld. Counsel for the management stated relying on a decision reported in 1997 SCC 257 in which Honble Supreme Court under Section 2(j) of the I.D. Act, 1947 defines 'Industry'- Research Institutes run by Government - Physical Research Laboratory- not an industry because it is purely a research organisation discharging governmental functions and a domestic enterprise than commercial enterprise, though it is taking employees' cooperation in achieving its purpose. It has been argued that Rajendra Memorial Research Institute is paid by I.C.M.R. as the Physical Research Laboratory is also paid by I.C.M.R. So it is not an industry

as per law laid down by the Hon'ble Supreme Court and Hon'ble Supreme Court also laid down that workman-Physical Research Laboratory (PRL) employees- are not workmen because PRL is not an 'Industry'. Hence further held on facts, respondent who was an employee of PRL could not claim retirement at the age of 60 instead of 58. Ld. Counsel for the management also filed M-2 an Award in Misc. Case No. 43 of 1998 (C) of CGIT Bhubaneswar, Orissa in which Regional Medical Research Centre Bhubaneswar has been declared as not industry and also M-3 Ref. 66/1996 of CGIT No.2, Dhanbad regarding the present management R.M.R.I, Patna in which it has been held that it is not an Industry. Management also referred another decision reported in 1997 4 SCC page 391 in which Hon'ble Supreme Court has held every department of Government cannot be treated as industry- Dispensing with services of persons engaged on daily wages in a Government department therefore is not a retrenchment.

13. It shows, therefore, that as per law present management is not an industry and no industrial dispute can be raised because there is no relationship of employees and employer, because the present workman is a casual labour engaged on daily wages basis.

14. It has been considered whether present workman has worked for more than 240 days continuously for getting regularisation under Section 25F and B of I.D.Act., 1947. Paper filed by the management marked as Ext. M-1 shows that he has not performed 240 days continuously prior to termination of his service, on 30-1-94. In this respect W-1 Munna Ram has stated in his cross-examination at page 3 that "I have not been issued any letter of appointment. I Used to work on daily wages basis. I have already been paid for work done by me and nothing is due to be paid. It shows that he has not worked continuously more than 240 days preceding the year of his termination of service on 30-1-94.

15. In this respect management has referred to a decision reported in 1997-4 SCC page 88 in which Hon'ble Supreme Court laid down Service Law - Daily wage employees - Right to post, if available - held not-Casual Labour. Daily wage employees-Disengagement of, on completion of work - validity - Held on facts, valid because daily-wagers were not appointed according to rules against any post, they were appointed according to need of the work and they had no right to post - Termination - Casual Labour. Ld. counsel for the management has also referred another decision reported in 2006 4 SCC page-3 Uma Devis case in which Hon'ble Supreme Court has held down the following :-

- A. Constitution of India - Arts 32, 136, 141, 142 and 226 and 16, 14 and 309 and 38 and 39(a) - Public employment-Absorption, regularisation or permanent continuance of temporary, contractual casual, daily wage or adhoc

employees appointed/recruited and continued for long in public employment dehors the constitutional scheme of public employment issuance of directions, for and for stay of regular recruitment process for the posts concerned - Impermissibility of - Need for addressing concerns of equity for all, and not of just the few before the court, by upholding of constitutional scheme of public employment, whose hallmark is equality of opportunity- Held, Supreme Court and High Courts should not issue such directions unless the recruitment itself was made regularly and in terms of the constitutional scheme-Reasons for, discussed extensively-Financial economic impact of such directions, as a factor-The wide powers under Art. 226 are not intended to be used for issuance of such directions, certain to defeat the concept of social justice, equal opportunity for all and the constitutional scheme of public employment-Supreme Court is bound to insist on the State making regular recruitments and appointments and not to encourage or shut its eyes to the persistent transgression of the rule of regular recruitment-It is erroneous for Supreme Court to merely consider equity for the handful of people who have approached the Court with a claim whilst ignoring equity for the teeming millions seeking employment and a fair opportunity for competing for employment. Further, courts must be careful in ensuring that they do not interfere unduly with the economic/financial arrangement of the affairs of the State or its instrumentalities."

G. Service Law- Casual Labour/Temporary Employee-Status and rights of -Unequal bargaining power-effect Held such employees do not have any right to regular or permanent public employment-Further, temporary contractual casual, adhoc or daily wage public employment must be deemed to be accepted by the employee concerned fully knowing the nature of it and the consequences flowing from it-Reasons for discussed in detail-Labour Law.

I. Service Law-Appointment-Modes of appointment-permissible modes -Absorption, regularisation, or permanent continuance of temporary, contractual, casual, daily wage or adhoc employees appointed/recruited, dehors the constitutional scheme of public employment on issuance of directions by Court-therefor- Held issuance of such directions amount to creating another mode of public appointment, which is not permissible.

16. Ld. Counsel for the workman has referred to a decision reported in 1978 SCC 2 in which Hon'ble Supreme Court has defined industry. Ld. Counsel for the workman has also referred to a decision reported in PLJR 1976 page 478 in which Hon'ble Supreme Court defined "Retrenchment" under section 25F of the I.D. Act, 1947. Ld. Counsel for the workman has referred to a decision reported in 1954 1 SCC page 396 in which Hon'ble Supreme Court laid down that Section 25F and 25B of the I.D. Act, 1947 apply only when termination of even a daily rated workman who has continuously served for the requisite standing minimum period in a year (i.e. minimum period of 240 days). Ld. Counsel for the workman has also referred to another decision reported in 1967 1 SCC (1 & S) page 43, in which the Hon'ble Supreme Court laid down the following:

Industrial Disputes Act, 1947 - S. 25B-Continuous Service Completion Respondents having been appointed against casual labour posts for 89 days however, continuing in employment for four up to their reappointment being made within a few days of termination on completion of the 89 days of work. Held, this shows that sufficient work was available with the employer and had there been no termination on completion of 89 days, respondents would have completed 240 days of continuous employment. Hence employer had violated S. 25B. Award in direction of High Court for payment of entire salaries and allowances for period respondents were out of service not justified under the circumstances. Termination took place from 11-1-1995 and a fairly long period (about nine years) had passed since then. In mean time respondents must have been engaged in employment in any other work. Hence back wages reduced to 50%. Reinstatement back wages/Arrears -Back wages. Factors to be considered in Award of.

In the present case the concerned workman had not worked for 89 days continuously with break of 4 spells. Ld. Counsel for the workman has referred to another decision reported in 2006 SCC L & S-1 in which Hon'ble Supreme Court laid down the following:-

"A. Industrial Disputes Act, 1947 - Ss. 25-F, 25-B(1) and 10-Requirement of 240 days continuous service. On us to prove. Evidence to be led - Applicable of Evidence Act, 1872. Held burden of proof lies on workman-It is for workman to adduce relevant evidence, both oral and documentary. Mere affidavits or self-serving statements made by workman will not suffice. Evidence Act not applicable to proceedings under S. 10 I.D. Act-In cases involving daily-wagers, workman can only call upon employer to produce before court nominal muster roll for the given period

and other documents. Adverse inferences drawn from absence of adverse inference will depend there after on facts of each case. Failure to re-employ productives of muster rolls produced in court plea of suppression by claimant workman will not be a ground for Tribunal to draw adverse inferences against employer. Evidence Act, 1872 not applicable. Application."

17. Ld. Counsel for the workman has also referred to another decision reported in 1967 1 SCC 961 in which Hon'ble Supreme Court defined "Continuous Service" under section 25B of I.D. Act, 1947. Industrial Disputes Act, 1947 contained in S. 25B, Industrial Disputes Act, 1947 an employer who has reached without any interruption of periods of 12 months immediately preceding termination of attachment and the records of earlier years. The Hon'ble Court held that employers were wrong in not submitting the records of the said earlier years as required. Therefore, the workmen having discharged their burden by producing the documents in their possession in Section 25B of I.D. Industrial Disputes Act, 1947, amounting to working for 240 days in any calendar year during the service period held satisfies the requirement of continuous service S. 25B thereof. But in relation to the said 1947 Section 25B requires 240 days continuous service in the preceding year after termination of service.

18. Ld. Counsel for the workman has vehemently argued on Certificate no. 89 which has been issued by B. K. P. Dinkar Advocate and Officer, Regarding this WW-I has stated in his affidavit submitted at page 3 that this certificate has been issued by B. K. P. for the purpose of using the same before the concerned establishment for getting himself engaged in a new employment by the concerned establishment. Ld. WW-I shows that it has been issued for the same purpose for getting employment to another place by the concerned workman because in the last line it has been written that he is very hard worker and honest and I will him and his family."

19. In the circumstances above, that the management is not an "Industry" as laid down by the Hon'ble Supreme Court and the concerned workman has not completed 240 days continuous service preceding before his termination. In the result, the following Award is rendered:-

"The action of the management of Rajendra Memorial Research Institute in terminating the services of the Petitioner is justified. Consequently, the concerned workman is not entitled to get any relief."

(J. M. SINGH, Presiding Officer)